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CRITICAL CONCEPTS IN RELIGIOUS STUDIES

Edited by
PAUL WILLIAMS

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Critical Concepts in Religious Studies

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THE FEMALE RENUNCIANTS OF SRI LANKA

The *dasasilamattawa*

Lowell W. Bloss

Source: *Journal of the International Association of Buddhist Studies* 10, 1 (1987): 7–32.

Scholars of contemporary Theravāda Buddhism in South and South East Asia have noted the significant changes in lay beliefs and practices as well as monastic reforms that have taken place since the late 19th century.[1] Yet, within their studies of this modern Theravāda reformation very little attention has been paid to the growth in prestige and numbers of Theravāda Buddhist renunciant women. The growth of orders of these robe clad, shaven headed women known as *dasasilmattawa, mae chi* and *thela shin* respectively in Sri Lanka, Thailand and Burma reflect the changes in Theravāda Buddhism and provide an important piece of the puzzle for understanding this reformation. This is particularly true of the *dasasilmattawa* movement of Sri Lanka, the youngest and most rapidly growing and changing of these movements of Buddhist female renunciants.

Initially, this study will document the history of the *dasasilmattawa* movement from its beginnings in the late 19th and early 20th centuries to its impressive growth in the 1950s. Focusing on three key *dasasilmattawas* (= *dsms*), Sisters Sudharmachari, Mawichari and Sudharma, this history shows how this movement has affinities and differences with "Protestant Buddhism" and relates to both the *vipassanā* meditation movement and the growth of the forest dwelling monastaries. After providing a history of this movement the study turns to an assessment of the contemporary status of the *dsms* as seen from the points of view of the members of this movement as well as from monk and lay perspectives. It will be suggested that the laity's respect for a more renunciant style of life than that of the village or city monks and the increasing popularity of *vipassanā* meditation accounts for the growing prestige of the *dsms*.

I. History of the *dasasilmattawa* movement

In his book published in 1892 R. S. Copleston describes men and women in white who have taken the ten precepts or *dasasil*. He reports:

> . . . there are few men of this profession, but a considerable number of women, generally old, are to be seen about the temples, especially in Kandy, or on the way to Adam's peak. They carry bowls as if for begging, and their shaven heads and dirty dresses give them a pathetic appearance, and one who had read the books would naturally suppose them to be nuns. Female mendicants they are, but they have not been admitted to the Community, and therefore are not called 'bhikkhuṇīs,' but only 'upādikās.' (lay women)[2]

It is difficult to know the exact origins of such elderly women. Reports and stories suggest that a number of these women *upāsikās* wandered in Sri Lanka in the early 1800s and it is probable that women mendicants were a part of the Sri Lankan scene before that time, perhaps dating back to the collapse of the *bhikkhuṇī* order in the 12th or 13th centuries.[3] Their numbers may have increased due to the revival of Buddhism in the late 1800s, especially because of the *poya* campaigns which encouraged laity to take the eight precepts (*aṭasil*) and wear white on full moon days, and because of the example of such figures as Anagārika Dhammapāla who took the ten precepts (*dasasil*) permanently.[4]

A small number of aged and seemingly destitute women like those Copleston described can still be seen today congregating at the Sri Mahābodhi in Anuradhapura or at other important Buddhist pilgrimage centers. However, some of these women now wear yellow robes, having taken *dasasil*, and are accompanied by one or two women in white who have taken *aṭasil*. The *aṭasils* in white can handle money and care for the *dasasils* in yellow. Often lacking shelter, these women beg for food and money or subsist on the food prepared by Buddhist charity organizations. Only the yellow robes of a few differentiate these women from those that Copleston described.

However, today there are many *dsms*, approximately 2500 wearing the yellow robe, who make every effort to disassociate themselves from the few poor older women such as those who beg near the Sri Mahābodhi.[5] Most of these modern *dsms* live in *ārāmayas* (monastic institutions) with more than three companion *dsms*, were initiated under the tutelage of a teacher in a line of succession of other *dsms*, and about half were given the ten precepts before their twenty-fifth birthday.[6] These yellow clad *dsms* are coming to see a close connection between themselves and the *bhikkhuṇīs* of ancient Sri Lanka. The link between the women in white of whom Copleston speaks and the modern day *dsms* in part is provided by Sister Sudharmachari, once Catherine deAlvis.

Catherine deAlvis was the daughter of David deAlvis Coonatillika, Mudaliyar of Raigama Korale, and Leisa deAlvis who was the sister of the famous

scholar James deAlvis. Catherine was thus related to some of the most important coastal families of Sri Lanka including that of Sir Don Solomon Dias Bandaranaika, the chief Sri Lankan advisor of the British.[7] It appears that Catherine's mother died early in her daughter's life and that her father then remarried. He too died before his daughter was 25 and subsequently she converted from Anglican Christianity to Buddhism and journeyed to Burma where she took on the robes of a *dasasil* before returning to Sri Lanka.

There are a number of stories about Catherine's conversion to Buddhism. A version repeated in several articles on Sister Sudharmachari credits Koswathie Nilame, an Ayurvedic physician of her father, with acquainting her with Buddhist texts.[8] One story, perhaps apocryphal, relates that seven days after her father's death, Catherine invited Buddhist monks to a *dāna* (almsgiving). The chief monk would not accept the *dāna* until someone in the family took the five precepts. Catherine took the precepts despite the objections of her Christian relatives.[9] Soon after her father's death Catherine settled in Kandy to continue her study of Buddhism. In Kandy she met a large delegation of Burmese renunciant women (*thela shin*), led by the ex-Burmese Queen Sein don, who were on pilgrimage to the Temple of the Tooth. It appears that Catherine and her servant accompanied the *thela shin* when they returned to Burma. Here she was initiated by Queen Sein don and studied Burmese and Pāli. Catherine remained in Burma until 1905 when she returned to Sri Lanka as Sister Sudharmachari.[10]

Without a first-hand account of Catherine deAlvis' conversion to Buddhism any statement concerning her reasons for this change remains speculative. However, it can be recalled that her uncle, James deAlvis, while an Anglican, felt the prejudice of the British and called upon Sinhalese to rediscover their heritage.[11] Moreover, the 1880s and 1890s was a time of Buddhist resurgence as well as contact with Burmese monks, especially by the low country *nikāyas* (schools of the *sangha*). A number of Christian families especially in the Panadura area were returning to Buddhism while many of the Sinhalese Buddhist elite were beginning to assert and reform their tradition under the catalytic leadership of Colonel Olcott.[12] These conditions no doubt proved a favorable environment for her conversion.

Upon her return to Sri Lanka, Sister Sudharmachari used her connections to develop support among the most prestigious low country families such as that of Don Solomon Dias Bandaranaika who seems to have introduced her to Lady Edith Blake, wife of the British Governor Henry Blake. Moreover, her conversion to Buddhism endeared her to many prominent up country families. At a tea party in the Peradeniya gardens in 1906 reported in the *Ceylon Observer*, Sister Sudharmachari, Lady Blake, D. S. Dias Bandaranaika, William Dunawilla Disawa, Mrs. L. B. Nugawela and Mrs. A. Coomaraswamy attended.[13] With the financial aid of these families Sister Sudharmachari formed the Sudharmadhara Society and built an *upāsikā ārāmaya* in Kaṭukäle on the Kandy-Peradeniya road. This nunnery was officially opened in 1907 by Lady Blake and bore her name.

With the building of Lady Blake's *Ārāmaya*, Sister Sudharmachari took homeless girls under her care and began to educate them. The Sister also took into her *ārāmaya* a number of aged, destitute, and blind women who became *dsms*.[14] In fact, the *ārāmaya* fast became a home for elderly *dsms*. It appears that Sister Sudharmachari had been warned by her teacher in Burma not to ordain women under 40 years of age since the *dsm* tradition was not well established in Sri Lanka and ordaining younger women might prove a disciplinary problem. The name board in front of Lady Blake's Nunnery thus read "Home for *elderly upāsikās*". In the 1920s this advice was nullified when Sister Sudharmachari needed younger sisters to take care of the older *dsms* that she had initiated.[15]

In her lifetime, Sister Sudharmachari, who also built an *ārāmaya* near the Thūpārāmaya in Anuradhapura, came to be called Hamumäniyo or Hāmupāsikā due to her aristocratic connections and bearing. Wearing a white blouse and a yellow robe to differentiate herself on the one hand from *bhikkhuṇīs* and, on the other hand, from the uninitiated, undisciplined women in white of which Copleston spoke, she was regularly visited by dignitaries from Burma and members of the lay Buddhist elite of Sri Lanka.[16] She died in 1939.

Sister Sudharmachari's example and that of her initiates, coupled with growing Buddhist education and *sil* campaigns directed to the youth stimulated a modest growth of the *dsm* movement from 1905 through 1935. At least three *ārāmayas* in Panadura were opened between 1910 and 1924 by students of Sister Sudharmachari.[17] However, despite this growth and a tendency to take younger members, *upāsikā* continued to be a term associated with older lay women and was used as a term of derision toward younger girls who took *sil*. One informant related that parents of girls from nearby High School would not allow their daughters to walk past Lady Blake's Ārāmaya for fear that they might be influenced to join the order and not fulfill their proper female role as housewife and mother.[18] Such prejudices began to change in the 1930s through 1950s due in part to the influence of Sister Mawichari.

Born in North Burma in 1897, Mawichari became distressed when she witnessed her sister's miscarriage. She cut her own hair in 1912 and her parents put her in the charge of an *ārāmaya* near Sagain Rock where she was initiated as a *thela shin*, learned meditation and became an expert in *abhidhamma*. In 1928 she came with 90 other nuns from Burma to worship at the Temple of the Tooth. In 1929 she returned to Sri Lanka and under the prompting of Vinayalanka Thero, a Burmese monk at Makuṭārāmaya, decided to stay and initiate *dsms* in Sri Lanka.[19]

Sister Mawichari created a sensation among the Buddhist women in Colombo and many came to see her and take her blessing. One laywoman, Piyaseeli Jayewardene, a qualified teacher educated at Museaus College was initiated as Sister Seelawati and by 1958 they had initiated over 50 women, most of them in their teens or early 20s.[20] A home often frequented by this pair of *dsms* was "Yamuna" owned by H. Sri Nissanka, who was to play a most important part in the growth of the *dsm* movement.[21]

H. Sri Nissanka, a noted criminal lawyer and Buddhist nationalist, was a key figure in Buddhist affairs in Sri Lanka in the 1930s and 1940s.[22] He was not only instrumental in making the *dsm* movement respectable among the urban elite but in bringing *vipassanā* meditation practice to Sri Lanka and popularizing this among the laity.[23] Born in 1899, he was educated first in Ananda College and then transferred to Royal College where he was involved in the YMBA. At 19 he travelled to Burma and was ordained a Buddhist monk. He thereby hoped to set an example for all Sri Lankan Buddhist laymen to become monks for a brief period in their early years. Soon afterward he returned to Sri Lanka to take care of his ailing father and subsequently went to England to train for a law degree. When he returned to Sri Lanka he continued to work for Buddhist causes and became the President of the All Ceylon Buddhist Congress in 1931.[24]

In the early 1930s, influenced by the discipline and learning of the Burmese Sister Mawichari, coupled with a personal experience in which he visited a Buddhist monk in a hospital and was distressed that the monk was nursed by Catholic nuns, H. Sri Nissanka began to galvanize support for an *ārāmaya* for *dsms*. Quoting the verse, *yō gilānan upaṭṭhāti, sō upaṭṭhāti man iti*, "whoever nurses the sick, nurses me," he hoped to set up an *ārāmaya* which would educate and discipline the *dsms*, many of whom had taken on the yellow robes of Sister Sudharmachari but were self-initiated and homeless.[25] In addition, H. Sri Nissanka hoped to train these *dsms* to be useful members of society. Theirs was to be a life of both renunciation and service.

This plan for the *dsms* as well as a number of H. Sri Nissanka's activities can be interpreted as strategies of the urban elite, who being divorced from the traditional rural framework tried to bridge the gap between this-worldly pursuits and the other-worldly concerns of Buddhism. Confronted with urban secular activity, influenced by the Western understandings and misunderstandings of Buddhism and sometimes better educated in textual Buddhism than the monks, this group searched for ways to link daily life to the goal of renunciation or at least bring a Buddhist ethic into everyday life. Here the quest of deliverance could be linked to deliverance from social ills. H. Sri Nissanka's taking the robe as an example to other Buddhist males suggests one such strategy; while his support of *vipassanā* for the laity is another. In this latter plan the laity take unto themselves a religious virtuosity once the property of the monks. By pushing the *dsms* toward service, and in fact suggesting that they follow the path of a female *anagārika* ("homeless one"), he proposes a third strategy. As Bardwell Smith suggests, these activities show an increase in the relationship between renunciation and present existence, a stress on equanimity that is non-attachment but not non-involvement, and reveal a conviction that Buddhism can speak to the modern world.[26]

The list of lay supporters that H. Sri Nissanka involved in this effort to build an *ārāmaya* for educated and disciplined *dsms* reads like a catalogue of the Colombo Buddhist elite. They agreed with his effort to reform the *dsms*, "who were seen to be wandering from place to place without guidance and bring them

under control and educate them to lead useful lives."[27] When the nunnery, named Vihāra MahāDevi Upāsikā Ārāmaya, was finally built at Biyagama and opened in 1936, under headlines reading "Life of Work and Service" and "Others Before Self," the newspapers reported that, "The society wishes to discourage the idea that this ārāmaya is meant to be an asylum for the aged and the decrepit."[28] Rather the *dsms* will conduct classes for 75 neighborhood girls. Service was emphasized for:

> Strange as it may seem even pious Buddhists seem to forget that the Buddha himself after attaining perfection served mankind for 40 long years. Nowadays, while everybody strives to attain self-perfection, the spirit of service is non-existent.[29]

The report continues that:

> The Upāsikās will in addition to spiritual instruction, be trained in first aid, hygiene and social work. They will be equipped to go out into the neighboring villages on missions of mercy.[30]

D. S. Senanayaka, the Minister of Agriculture, helped to open the *ārāmaya* with these words:

> Buddhists who speak so much of Ahimsa had not taken steps to educate women in the art of succoring the sick. Such work is done by Christian Sisters and it is high time women of the country work for the welfare of fellow human beings in a selfless way.[31]

The laity were clear in their goals for the inhabitants of this new *ārāmaya*—renunciation and service. Only in the former were they to achieve success. The laity brought Sisters Mawichari and Seelavathi to the Biyagama Ārāmaya in 1938 and 1939 to teach the *dsms* meditation, *abhidhamma*, and discipline.[32] While such Buddhist education proved to be successful, in the three yearly reports published in July, 1938, 1939 and 1940, the *dāyakas*, or "donors", express concern with the lack of public service displayed by the *dsms*. In 1938, the laity report that while their duty of meditation is being done, no work of value to the residents of the vicinity is completed. In the 1939 report the hopes of the laity begin to rest on a younger *dsm*, Sister Sudharma, whom they were educating at Musaeus College and who becomes the most important figure in the history of the *dsm* movement.[33]

This important episode reveals a conflict between two strategies for redemption within Buddhism. On the one hand, there is an urban educated elite influenced by the examples of Christian service organizations including Catholic nuns who taught in schools and nursed in hospitals. Attempting to assert their pride in Buddhism these members of the elite, whose predecessors had built

Buddhist higher education, started Buddhist Sunday schools, began the YMBA, and supported similar organizations parallel to those of the Christians, continued to assert what has come to be called "Protestant Buddhism": a Buddhism that stressed an ethic of involvement, a rational and pragmatic interpretation of Buddhist ideals and a this-worldly asceticism. On the other hand there is the *dsms* drawn mostly from rural backgrounds and steeped in the practice of monks who gave spiritual and ritual gifts to the laity and not social service. Added to the monks' example was the female *aṭasil* who gained purity and merit by worship and contemplation on *paya* days and whose calm behavior was felt to be particularly befitting a woman. Following this example the *dsms* were willing to practice meditation—and as will be seen below, wholeheartedly accepted the *vipassanā* techniques brought to Sir Lanka with the help of H. Sri Nissanka—but were unwilling to use the tranquility taught in meditation in social service. Another factor that led to a rejection of the service ethic of the urban laity might have been the class background of the *dsms*. Many seem to have been drawn from the rural small landholding class whose female members realistically only could aspire to becoming teachers in the lower grades in village schools. They had rejected this goal and taken the unpopular step of renouncing the role of housewife when they became *dsms*. Instead of service, they saw their life as one of renunciation.

At first glance Sister Sudharma seems to have realized the service oriented dream of H. Sri Nissanka, as this Sister became a teacher at Museaus College. She also gave numerous talks on the Buddhist Dhamma throughout Sri Lanka as well as radio and newspaper interviews. It is to Sister Sudharma that much of the credit can be given to elevating the status of *dsms* in the eyes of the laity as well as the rapid growth of the movement from the 1950s which marked an upsurge of Buddhist nationalistic feeling, in part due to the 2500th anniversary of the Buddha's birth. However, Sister Sudharma has given up her teaching position at Museaus College which she held from 1955 to 1977 and now speaks strongly of the need for a strict renunciation on the part of *dsms*. A brief biography of Sister Sudharma might point to the fact that the life of renuniciation and retreat that she now observes was a major factor in her ambition to become a *dsm*. This same motivation characterizes most *dsms* today.[34]

Born in 1919 into a farming family with small plantation ownings, Sister Sudharma became a nun when she was 13 years and 4 months of age in 1933. The motivations for such a step can never be fathomed adequately but a number of reasons are readily recalled by Sister Sudharma. As a very young girl she was upset by the graphic portrayals of the numerous Buddhist hells at the temple at Botale and vowed to follow a path that would preclude such an end. Thinking of the numerous Buddhist hells, she was told the story of a man who heard the words of the Buddha and decided to observe the ten precepts despite the fact that he was starving. Due to his weakened condition when he began to observe the precepts, he died and became a tree deity. Thinking that such a divine state was obtained by only half a day of observing ten precepts Sister Sudharma vowed to

take the precepts as often as she could. She took the five precepts every night and when she did not she dreamed of punishments. The taking of the precepts also came to be linked with good health. When she began to suffer from malaria with frequent chills, her mother advised her to take the eight precepts daily at the temple. She followed this advice from July through November of 1932 and she subsequently lost the symptoms. After this experience she asked her uncles to build her a very small shrine and meditation room where she spent more and more of her time. Here she worshipped the Buddha and, while not formally taught meditation, she reflected on the 32 impurities of the body. Once while contemplating the impurities her austerities brought her a sense of tranquility that lasted for a number of days.

This youthful piety led Sister Sudharma to a decision to become a *bhikkhuṇī*. While she had never seen a nun she had studied about the arrival of the *bhikkhuṇī* order in Sri Lanka and appeared to believe it still existed.[35] When she was 10 or 11 she did see a *dsm* and in the next several years she cut her hair a number of times and took on yellow robes, much to the dismay of her family. Finally, a *dsm* came to her village to learn Pāli from a local pundit and she slipped away to her, donned the robes and returned to her family for their blessing. After difficult negotiations, her family gave into her request with the promise that she would stay in the village. Even though her preceptor moved from the village in several months, Sister Sudharma stayed with her family for three years and then heard of the opening of the Biyagama Ārāmaya by H. Sri Nissanka. Taking a servant she went to the house of H. Sri Nissanka and he promised to negotiate with her family and gain their approval for her entrance into the new *ārāmaya*. After entering the *ārāmaya* at Biyagama she was chosen by Mrs. J. R. Jayewardene to be educated at Museaus. Subsequently, she went on to Colombo University, from which she graduated in 1951. Under the urging of Professor G. P. Malalasekera she then travelled to Penang to teach the *dhamma*, but returned when her mother fell ill. She then taught at a girls school in Ambalangoda until she was asked to come to Museaus in 1955. At the same time she began to run the *ārāmaya* at Biyagama and to establish other nunneries. After quitting Museaus in 1977 Sister Sudharma retired to the forest where she remained for some five years at Kutumbigala under Ven. Jinavaṃsa Ānandasiri. She is now the head of a group of 13 *ārāmayas* and is supervising the building of a nursing home for aged nuns.

In reflecting on her life, Sister Sudharma tends to depreciate the service period suggesting that very few can have such a worldly position and remain dedicated to renunciation. She sees her teaching as a debt owed to her sponsors, but now dedicates her life to renunciation. She soon hopes to return to the forest where she expects to remain until death or sickness ends this career. The disciplined and meditative life is certainly what she expects of her students. All novices that she accepts at her nunneries must spend at least three months at the *vipassanā* meditation center at Kunduboda. The blending of veneration and emulation of the forest monks, the training in *vipassanā* meditation and the

renunciation of the worldly affairs that marks Sister Sudharma's present practice is characteristic of the hopes of the majority of the *dsms* today and accounts for the growing prestige of this movement, as will be shown below.[36]

The *dsm* movement which Sisters Sudharmachari, Mawichari and Sudharma have helped to stimulate now numbers approximately 2500 and is growing rapidly. The *dsms* in yellow who live in *ārāmayas* and are initiated only after a period of novicehood, far outnumber the women of which Copleston spoke or those wandering *upāsikās* whom H. Sri Nissanka wished to reform and put into social service. These *dsms* are beginning to gain the respect of the laity and the attention of the monks. We turn now to an analysis of where the new *dsms* place themselves in the Buddhist *sāsana* (religion) and how the laity and monks characterize the life-style of the *dsms*.

II. Views of the *dsm* movement

A. The dsms' *view of themselves: between lay and* Bhikkhuṇī *status*

The majority of *dsms* today are attempting to make a place for themselves between lay and *bhikkhuṇī* status. Sister Sudharma, for instance, suggests that the *dsm* movement is not a part of the *sangha*. Yet, it is not a lay order. She explains that according to Ven. Kadavädduvē Jinavaṃsa, who heads a number of forest hermitages in Sri Lanka, there are three ways of taking the ten precepts. The lay person can take *dasasil* for a day, when *sil* is administered by a monk, who uses the word *gahapati* ("householder"). The *dsm* begs for the *dasasil* without the use of this term, thus rejecting the lay or *upāsikā* status, while the novice monk takes *pabbajjā dasasil*, which collapses the ten precepts into one rule and prepares the way for full ordination into the *sangha* (*upasampadā*). The fact that the word for householder is not used during the initiation places the *dsm* at a mid-point between the laity and *sangha*.[37] Other *dsms* who are leaders of important *dsm* organizations were unable to explain their place so fully but noted that the *dsms* are in a special category, and one said that definitely the *dsms* were *sāmanerī*: female novices but not officially a part of the *sangha*.[38] As further evidence that the *dsms* do not consider themselves a lay order, the *dsms* call Sanghamitra who brought the Sri Mahābodhi to Sri Lanka and established the *bhikkhuṇī* order, their mother. They also read the *Therīgāthā* which contains life histories of early *bhikkhuṇīs* as an important reference for the reasons a woman might wish to become a *dsm*. Also of interest in pointing to the position of the *dsms* in their own eyes is the answer to the question as to whether they would soon pass away if they were to attain arahantship. According to the Buddhist canon if they were lay Buddhists who did not join the *sangha* immediately after attaining arahantship, they would die in a short time. Unanimously, the *dsms* asserted that as they were not a lay order and had renounced the household they would continue to live after attaining arahantship. Another clue to the fact

that they do not see themselves as *upāsikās* is, of course, the "yellow robe," in various shades from almost red to brown, the *dsms* have adopted. This is in contrast to the white of the *aṭasil* and the white and yellow of the first *dsm*, Sister Sudharmachari. It should be noted that their dress is not technically a robe which must be made according to strict *Vinaya* rules and which only the monks can wear, but this difference is not often cited by the *dsms* and certainly is not understood by most laity as will be shown below.

This view of their own status between the laity and monk is also affirmed by the response of the majority of *dsms* to the possibility of *upasampadā* or full ordination into the *sangha*. This question of full ordination of women into the *sangha* is often debated in the contemporary Sri Lankan press. The possibility of such an ordination is suggested by the fact that Sri Lankan *bhikkhuṇīs* travelled to China in the fifth century A.D. to ordain Chinese women.[39] It is argued that if the line of nuns still exists in China, these nuns could reintroduce the *bhikkhuṇī* order into Sri Lanka. However, while there are some outspoken *dsms* on both sides of this issue, most *dsms* say that if *upasampadā* were possible—which they doubted due to the Mahāyāna character of the Chinese *bhikkhuṇī* order—they would not accept this ordination. A number suggested that ordination would limit their freedom from the monks and that the close relationship between *bhikkhus* and *bhikkhuṇīs* might bring the downfall of a *sangha* which they view as in decline.

Whichever way is chosen to explain their mid-position, the *dsms* often imply that their position is based on their *sil*. They explain that if their *sil* or the moral purity of their conduct and thought is good, the laity will see their status as close to the *sangha*. They quietly assert that with exceptions, their *sil*, based on careful observation of the rules, is purer than that of the village or city monks, leading to the conclusion that they are indeed worthy of the respect often given the monks. The *dsms* decry the monks' involvement in politics, their luxuries and their education in coed institutions as not living up to the monastic rules. As a number of *dsms* remark, it is better to follow 10 rules well, than 227 rules poorly. In contrast the *dsms* note that their education is exclusively in the *dhamma* and within the confines of an *ārāmaya*. In criticizing the behavior of village and city monks the *dsms* are echoing the opinion of most laity and they are placing themselves in close relationship with the forest dwelling monks who like the *dsms* stress renunciation of daily life and meditation.

Contemporary *dsms* see their chief task as that of attaining arahantship. Unlike the monks interviewed by Richard Gombrich who doubted arahantship was a possibility in this degraded age, the *dsms* believe that they might attain such a state.[40] In this effort they continue worship and recitations of the *dhamma* in addition to various types of meditation. The meditation technique that is gaining attention is *vipassanā*. Many of the younger *dsms* have taken some training in *vipassanā* in one of the *vipassanā* meditation centers, a number are skilled teachers of this technique and some have set up their own *vipassanā* training centers.[41] Perhaps this technique and the teaching surrounding it, taught

by Burmese monks who are used to the help of their *thela shin*, has helped to lead to the belief in the possibility of arahantship.[42] In addition to the *ārāmayas* being places of meditation, worship and renunciation for the *dsms*, they have become places of retreat and help to lay women. Many of the *dsms* with whom I spoke mentioned that they allow lay women with family problems to stay at the *ārāmayas* and try to counsel the wife and husband or daughter in actions that might heal the difficulties.[43]

The relationship which the *dsms* wish to have with monks is best summarized by one Sister who suggested that the monks are, like chancellors of universities, only to be called in for formal events such as an initiation.[44] When Sister Sudharma was asked when monks were needed other than at times of initiation, she recalled only one instance, in which the parents of a novice who believed their daughter should be initiated after a normal two-year novicehood protested when Sister Sudharma told them that their daughter was not yet ready. Sister Sudharma then called for the help of a monk from Kelaniya who is on the *ārāmaya* committee to speak with the family. A leader of one of the largest organizations of *dsms*, Sister Khemachari, suggested that the ten precepts should be given by monks once or twice a month, but was very unwilling to appeal to monks concerning the running of her nunneries other than in rare cases. This was particularly interesting as Sister Khemachari belongs to an organization of *dsms* begun by a monk who carried out the desire of his preceptor to start an order of *dsms*. In this endeavor the monk—considered by the laity to be a forest dweller—advertised in a newspaper for a *dsm* to initiate a number of pious women. Mawichari responded, taught Khemachari and others and then withdrew. Subsequently, this organization has grown with the help of one particularly generous *dāyaka*, who echoes H. Sri Nissanka's belief that Buddhist *dsms* should be as well cared for as the Catholic nuns, but believes their task should be meditation and not social service. This perspective reveals a shift of the lay view of the *dsm* which will be shown below. Despite this growth of her order and the decisions involved, Sister Khemachari, now the head of 14 *ārāmayas*, rarely seeks the advice of the head monk of the *dsm* organization.[45] The rule seems to be to honor the monks and supply *dāna* and robes for them on occasion but not to allow them to become too involved in the running of the *ārāmaya*.[46]

Dsms of the more financially secure institutions tend to distrust the government interference. Many of those interviewed, in fact, have not returned a government questionnaire that would have led to the issuing of *dsm* identity cards. This action seems to be due to a general distrust of urban lay involvement in *ārāmaya* affairs and the fear of being pressed into social service. However, there are many *ārāmayas* which are suffering from insufficient funds. Here, supported by their own family or a few *dāyakas*, the *dsms*' attempt to live disciplined lives is less than successful. In responses to questionnaires sent out by the Commissioner of Buddhist affairs, many of these *dsms* hoped that the government could intervene and supply funds for reconstruction. Moreover, the *dsms* do not often benefit from traditional ownership of property which the monks

possess and in some circumstances this leads to their eviction from their *ārāmayas*. They hoped the government could help to solve this problem.[47]

The better run organizations of the *dsms* remain quite parochial in their attitude toward the *dsms* in trouble and toward other groups of *dsms* in general. This attitude seems to arise from the character of the chief *dsms*, who joined the order when it was very unpopular and had to fight long battles with their families. The strength of character that allowed them to persevere, has led them to a rather uncompromising view of how their *ārāmayas* should be administered and their novices taught. This lack of cooperation between *dsms* and their organizations might soon disappear. The women who are now entering the order are having a somewhat less difficult time convincing their families to allow them to be initiated. At the established *ārāmayas* the family can be assured of the protection of their daughters and the purity of the *dsms*' *sil*. Moreover, the reasons for joining the order now seem to echo those given by young monks. The young *dsms* often state that they took a liking to the robe: to the calm demeanor of the Sisters. Perhaps, with the growing acceptability of this way of life, the Sisters will have to struggle less to preserve their identity and more easily will join together. Sister Khemachari, age 44, who joined the order in 1958, for instance, seems willing to associate with *dsms* from other organizations and contemplate an all Sri Lankan association of *dsms* if it is led by the *dsms* themselves and not the laity.[48]

B. The monastic view of the dsms*: a need for discipline*

Many monks began their assessment of the *dsm* movement by pointing out that the *bhikkhus* have no responsibility for the *dsms* since these women do not belong to the *bhikkhuṇī* order. A number went on to say that there is no *bhikkhuṇī* order in Theravāda Buddhism, that there cannot be such an order and that the laity are wrong in their acceptance of the *dsms* as *bhikkhuṇīs*. Some suggested that in actuality these women were masquerading as part of the *sangha*. In several conversations the initial refusal of the Buddha to ordain women was mentioned, as well as the canonical statement that due to their ordination the *sangha* would not endure as long as it would have if women were not ordained. Lessons that were to be learned from this are that women are physically and mentally weaker than men and cannot endure crisis, and that problems of discipline arise when the sexes are mixed too closely.[49]

These initial responses of the majority were most often followed by assertions that the *dsms* should be trained by the government and put to some useful social service. Health care for village women, staffing hospitals and teaching the *dhamma* to women and children were mentioned as possibilities.

A minority of monks believed that the *bhikkhuṇī* order could be reestablished and were prepared to work for this possibility. They stated that if an unbroken line of ordination in China from Sri Lanka could be proved they would propose that selected *dsms* be given *upasampadā*. However, they acknowledge that the

majority of monks would not support this move. They believed that *upasampadā* would assure disciplined and educated women to carry on the Buddha's word. The aim of *upasampadā* seems, therefore, little different from the aim of the majority of monks: to assure that these women undergo training and discipline.

C. The lay view of the dsms*: a search for purity in motivation, discipline and renunciation*

In a survey of laity taken in various areas of Sri Lanka, it was found that an overwhelming number knew about the *dsm* movement and almost all could name a *dsm* or an *ārāmaya* in their area. More than half of those interviewed had helped the *dsms* at one time and ten percent regularly supplied food or money to the *dsm* movement. While there was mention of the *dsms* who wander and beg, the respondents still said they must respect these women because of the robe. Many made a differentiation between the wandering *dsms* and those associated with *ārāmayas*. When asked how they would characterize the life of the *dsms*, most responded that the *dsms*' life was full of *sil* or very pious, *sīlavanta*. They were also felt by many to be good meditators. While these views were held by men and women alike, a number of women added that the *dsms* understood their problems and they went to them for advice.[50]

In comparing the life of a *dsm* with that of a monk, a few laity mentioned that the *dsms* were not *bhikkhuṇīs*, but agreed with the vast majority of respondents that the life of the *dsms* is more disciplined and less pompous than that of the monks. In fact, there was some sense that women are more disciplined in religious matters than men and that when they take the robe this difference continues. Again and again the laity readily criticized the monks' life as too luxurious or having too many material comforts. This was contrasted to the austere life of the *dsms* who do not have the traditional supports that the monks have come to expect. A number of laity went on to explain that the motives for becoming a *dsm* are more pure than those for becoming a monk. The monks, it was explained, might join the order due to family pressure or the promise of prestige, the possibility of education or a comfortable life. The *dsms* could not expect such supports nor would their families give approval to such a move. A number of laity remarked that a woman only has a home and when she has given this up she has given up everything, implying that a man has opportunities outside the home. Some remarked that the *dsms* had more discipline and that they never heard of a *dsm* giving up the robes but this was a frequent occurrence among monks. Some laity, when pressed added that, of course, there were very good monks in the forest.

While more research needs to be completed on lay attitudes, the questionnaires suggest some interesting factors in the lay views of the *dsms* and the monks. The laity seem ready to accept the *dsms* as part of the *sangha*. Even those who recognized that the *dsms* were not strictly *bhikkhuṇīs* said that they still needed to respect the robe. Moreover, the laity showed an impressive

tolerance of even the most undisciplined *dsms* in this regard. The almost desperate situation of some *dsms* and the lack of traditional and governmental supports for these women, helps the laity to see the *dsms* on a higher level than the ordinary monks. The majority of monks who receive far more lay support and have a much more secure position than the *dsms* are disparaged. The purity of their lifestyle and motivations are questioned. Often willing to downgrade those they support financially and praise those they don't, some laity seem ready to place the *dsms* on a level of *sil*, meditation and discipline above the village monks and below the forest monks. In this hierarchy the laity is searching for a group that meets its very high standard of purity of motives and renunciation.

In addition to the laity's acknowledgement of the purity of *dsms'* discipline and renunciation another important element that is leading to a growing prestige of the *dsms* is the support they have received from the middle and upper class laity who are interested in meditation. Many of the *dsms* have studied *vipassanā* meditation techniques, some taking a leading role in centers of such meditation and others teaching this type of meditation at their *ārāmayas*. This meditation, apparently brought to Sri Lanka by H. Sri Nissanka, while wide-spread in appeal has sparked particular interest among the women of the upper and middle class of Colombo. Here it provides the elite with a method of religious virtuousity: a way of taking to themselves the renunciation at one time seen as the prerequisite of the monks. It also enables the meditators to accept their daily life in the light of the Buddhist doctrine of transitoriness.[51] Into this situation has stepped a German-born American *dsm*, Sister Khema, who is having a significant impact on the status of the *dsms* at least among the educated elite.

Sister Khema, who has been interested in meditation since 1963 and studied *vipassanā* at a training center in Rangoon, has travelled extensively in South and Southeast Asia, established a Buddhist monastery and lay community in Australia and requested Khantipalo Thera to be an abbot there in 1978. She was ordained as a *dsm* in 1979 by Narada Thera at Vajirarama temple in Colombo and started travelling world wide to teach the *dhamma* and meditation. In 1981 she returned to Sri Lanka to attempt to build an International Buddhist Women's Center where women from all over the world might come to meditate and learn the *dhamma*.[52] This hope was mentioned in a news report and she was subsequently contacted by Mrs. Irene Nanayakkara who was then president of a group which had established the Sri Lanka Buddhist Nuns Association in hopes of training and educating *dsms* and forming all the *dsms* in the country into a coherent organization. Mrs. Nanayakkara's society had acquired a small plot of land in Madiwala-Kotte and had begun to build an *ārāmaya* in hopes that *dsms* could receive education there and subsequently return to their respective *ārāmayas* to teach their fellow *dsms*.[53] Mrs. Nanayakkara convinced Sister Khema that this land could also house the International Women's Buddhist Center and Sister Khema has been raising funds for this center ever since.

Sister Khema has created quite a stir among the English speaking elite of Colombo and she has made the growth and education of the *dsms* a cause for

many of the women of this class. Preaching in halls and on television and holding *vipassanā* meditation retreats, she lends prestige to the *dsm* movement in the eyes of the elite. Her importance is evidenced by the fact that an Island on Rajgama Lake near Dodunduwa has been readied for her and other female meditators by the laity in that area. This site has long been used by learned forest dwelling monks and as the center for the European monks.[54]

Sister Khema, however, remains an outsider to the *dsm* movement of Sri Lanka. She is willing to consider *upasampadā* for the *dsms*. This is partially to guarantee reform of the wandering *dsms*, but more importantly she hopes that this would give the *dsms* status equal to that of the monks. This thinking is not supported by most *dsms*, who seem to enjoy the freedom from monks and monastic rules that their present in-between status guarantees. The *dsms* also seem to realize that such a move would not be supported by the monks and they might lose the support they receive from some monks they now have as advisors. Moreover, Sister Khema seems eager to sponsor an all Sri Lanka organization of *dsms* led by laity. Such an organization is feared by most *dsms* who believe that they might be forced into social service by some of the urban elite. In fact, Sister Khema speaks of *dsms* as taking part in development of the country: as holding *dhamma* classes for women and children and providing classes in hygiene. She says "Do not eat the rice of the country in vain."[55] Certainly, recalling the hopes of H. Sri Nissanka, the push among some laity for *dsms* dedicated to social service continues but this is now tempered by the growing acceptance of the *dsms*' role in *vipassanā* meditation.

III. Conclusion

We have seen a gradual growth of the *dsm* movement. The growth can be said to be symbolized by the change of colors of the robe from white, to white and yellow, to all yellow. It is doubtful that the wandering women in white of whom Copleston spoke in the 1890s were held in high respect. They were mainly older women stimulated by piety to spend their last years in worship. Certainly such action on the part of a young woman would not have gained wide acceptance. Into this situation came the first modern *dsm*, Sister Sudharmachari with her white blouse and yellow robe. This signified that she was not a member of the *sangha* but neither was she a wandering, undisciplined and uneducated *dsm*. Nevertheless, her rule of initiating only women over 40 continued the characterization of *dsms* as elderly lay women. In the 1930s and 1940s with the influence of Sister Mawichari and Sister Sudharma, who initiated young women, the yellow robe began to be seen by the *dsms* as a sign of a new status. They began to break away from the *upāsikā* label and to see themselves and to be seen by others as occupying a level between the laity and *bhikkhuṇīs*.

The *dsms* have gradually gained the respect of the Buddhist laity of Sri Lanka. This elevation of status is due to a number of factors. The *dsms* benefit from the ambivalent attitude of the laity toward the village and city monks.

Unlike monks who are often faulted for participating in secular affairs and being surrounded by worldly goods, the *dsms* are seen as truly renouncing society. The traditional piety of women coupled with the fairly poor circumstances of most of the *dsms* have reinforced the laity's view of their piety. Moreover, the *dsms* who have rejected the avenue of social service and stressed renunciation, have increasingly related themselves to the forest dwelling monks and thus tapped into the prestige which the laity attribute to this group. Furthermore, the *dsms* have embraced *vipassanā* meditation as practitioners and teachers more than have the Sri Lankan monks.[56] This has further elevated this meditation as a method which allows the laity to perceive the transitoriness of their day to day existence with calm Buddhist understanding. Finally, the *dsms* have offered to women in difficult situations a place of retreat and advice, as well as providing many other women with a hope of recapturing in contemporary Buddhism the elevated place of the female renunciate in ancient Sri Lanka. While tapping these sources of prestige, the *dsms* have remained conservative. They have not challenged the existing *sangha* nor do they see themselves as a reform movement. Rather, they have quietly begun to fit into the Sri Lanka Buddhist scene.

There are, however, some important stumbling blocks to the continued slow growth of prestige of the *dsm* movement among the laity. *Upasampadā* is becoming an emotional issue for a few *dsm* and for many urban lay women. This issue could cause a confrontation between the *dsm* movement and the *sangha*. Most recently, as the result of the efforts of Sister Khema and some Colombo Buddhist women, a number of moves that might raise this issue have been made. Responding to a letter written by Mrs. Devendra, a close associate to Sister Khema and a leading Buddhist lay woman, Mrs. J. R. Jayewardene has created a separate *dsm* division under the Commission of Buddhist Affairs. This unit continues to try to issue identity cards to the *dsms* as well as providing minimum food and shelter to destitute *dsms*. The Colombo Buddhist elite have also asked the Education Department to establish a training center for *dsms* similar to the *pariveṇas* for monks. Finally, it has been suggested that the *dsms* be given the *pabbajjā dasasil* administered to novice monks and that the *Vinaya* rules for *sāmanēris* be formally accepted.[57] This could be viewed as bringing the *dsms* closer to full ordination in the *sangha* and might bring about a confrontation between the monks—the majority of whose views are conservative on the subject of *upasampadā* for *dsms*—and the supporters of the *dsms*. However good intentioned the hopes of the urban elite supporters of full ordination for the *dsms*, this will certainly test the gradual rise of prestige of the *dsm* movement. The *dsm* movement successfully fought the attempt of the urban Buddhist elite to place them into social service positions; the drive for *upasampadā* forecasts another struggle between the majority of *dsms* and the *laity*.

The late 19th and the 20th centuries have brought many changes to Sri Lankan Buddhism. The history and contemporary status of the *dsms* supplies one more piece to the puzzle of this complex reformation. Since it relates to the growth of the numbers of monks who have retreated to the forest, the questions

concerning the purity of the village and city monks among the laity, the laity's appropriation of the traditional roles of these monks, the popularity of *vipassanā* meditation, the growing role of women, and the response to their needs within a Buddhist context, the study of the *dsm* movement provides clues to major changes in Sri Lankan Buddhism, and it should be an interesting tool for analysis of the continuities and changes of Sri Lankan Buddhism in the future.

Notes

1 This study is based on field research in Sri Lanka completed in 1982–83 and the summer of 1984 under a Fulbright-Hays grant and a Mellon Foundation grant administered by Hobart and William Smith Colleges. Special thanks go to Mrs. Kusuma Devendra who is completing her PhD. dissertation on the *dsms*. We travelled many miles together seeking *dsms* to interview and she proved a wonderful translator and research companion. Walter Perera of Peradeniya University also translated many documents pertaining to the *dsm* movement and Ms. Lakmali Gunawardena conducted interviews on lay attitudes at the Temple of the Tooth.

2 R. S. Copleston, *Buddhism: Primitive and Present in Magadha and in Ceylon*. (London: Longmans, Green & Co, 1892), p. 279.

3 *Notes on Some Sinhalese Families*, Part VI. (From the Diaries of E. R. Gooneratne). ed. P. E. Pieris (Colombo, 1911).

4 A person taking the Three Refuges in the Buddha, the Dhamma and the Sangha and the Five Precepts is considered a Buddhist. The Five Precepts (*pansil*) include not taking life, not stealing, abstaining from wrong sexual practices, not telling lies and abstaining from intoxicants. An *aṭasil* takes three more precepts: not to take solid foods after noon, not dancing and adorning oneself, and not using comfortable beds and chairs. For *dasasil* the seventh precept is broken into two and the tenth precept involves not touching gold or silver. This precept is often interpreted as not holding money.

5 Interviews conducted June, 1983.

6 Analysis of questionnaires of *dsms* from the Commissioner of Buddhist Affairs, Colombo.

7 Personal communication of the geneology of the Duwewatta Walawwa family. I would like to thank Mr. K. Dharmawickrama of Kandy for pointing out Catherine deAlvis' relationship to James deAlvis.

8 *Short Biography of Sister Sudharmachari published on the occasion of her death*. No date or author given. See T. S. Dharmabandu, *Sinhala Virayo*, (Ceylon: S. B. Pranandu, 1949).

9 Interview with Sister Ampitiye Anula, a student of Sister Sudharmachari.

10 *Ibid*. Chaung Oo Manug Sandar, "The Monastery of Queen Seindon," *Ngwe-dar-yi* (1980). This article was translated by Dr. U Kyaw Than who with Director Htun Hmat Win of the Ministry of Religious Affairs of Burma and his Deputy Director, Daw Khin Khin Su was of immense help in developing material on the *thela shin*.

11 M. Ames, "Westernization or Modernization: The Case of Sinhalese Buddhism," *Social Compass*, XX, (1973/2), p. 155.

12 K. Malalgoda, *Buddhism in Sinhalese Society 1750–1900*, (Berkeley: Univ. of California Press, 1976), pp. 205–255.

13 *Ceylon Observer*, Tuesday, September 25, 1906.

14 B. S. Woolf (Mrs. W. T. Southorn), *How to See Ceylon*. (Colombo: Times of Ceylon), 1914), pp. 91–92.

15 Interviews with Sisters A. K. Somawathi and W. M. Seelawathi, two of the first of the younger *dsms* to be ordained by Sister Sudharmachari.

16 Interviews with Sisters Ampitiye Anula and Kotmale Sudharma.
17 Sri Nanada Upāsikārāmaya, Tanthirinullārāmasya, and Seelawathi Ārāmaya.
18 Interview with Sister Nawala Dhammika of Anuradhapura.
19 Interview with Sister Kotmale Sudharma to whom Sister Mawichari had given her biography. "Ma" and "Daw" are terms of respect designating age in Burma. These terms were grafted to the names of the Sisters by the Sri Lankans.
20 Interview with Sister Khemachari of Badalgama.
21 Interview with Ranjit Sri Nissanka, son of H. Sri Nissanka.
22 J. Jiggins, *Caste and Family in the Politics of the Sinhalese: 1947–1976*, (Cambridge: Cambridge Univ. Press, 1979), p. 90.
23 Personal communication from Professor George Bond.
24 P. G. Gunatillika, *Sri Nissanka*. (Wellawatta, Sri Lanka: Helaviva Press, 1947).
25 *Ibid.*
26 B. Smith, "Sinhalese Buddhism and the dilemmas of Reinterpretation," in B. Smith (ed.) *Two Wheels of the Dharma*, (Chambersburg, PA: American Academy of Religion, 1972) p. 86.
27 I would like to thank President J. R. Jayewardene for allowing the use of the Presidential Archives where I found much of the following information on the founding of the Biyagama Ārāmaya. *Report on the Vīhāra MahāDevi Samitiya*. (1936).
28 *Ceylon Times*. February 6, 1936.
29 *Ibid.*
30 *Ibid.*
31 *Daily News* October 26, 1936.
32 *Report of the Vīhāra MahāDevi Samitiya*. (1939). Also an interview with Sister Sudharma who was taught by Sister Mawichari.
33 *Report of the Vīhāra MahāDevi Samitiya*. (1938, 1939, 1940).
34 Interview with Sister Sudharma.
35 Interview with Sister Sudharma and a letter from her grade school teacher, Mrs. M. Kulasekere.
36 Interview with Sister Sudharma.
37 Interview with Sister Sudharma. The material in this section comes from interview with *dsms* throughout the Sinhalese areas of Sri Lanka. As a rule interviews were held with the head of the nunneries and as these women tended to be the most educated and most orthodox in their beliefs, the study is slanted toward their understandings of the present situation. A fine study of the *dsms* primarily in the Anuradhapura region but having implications for the dsm movement as a whole has just been completed by E. Nissan. "Recovering Practice: Buddhist Nuns in Sri Lanka," *South Asian Research*, Vol. 4, No. 1 (May, 1984), pp. 32–49.
38 Interview with Sister N. Dhammika.
39 K. A. Chissell, "Legacy of the Sinhalese Nuns in China," *World Buddhism Vesak Annual*, (1972), pp. 20–23.
40 R. Gombrich, *Precept and Practice*, (Oxford: Clarendon Press, 1972), pp. 285–286. The monks to whom I spoke also expressed the belief that arahantship was not obtainable in this degraded time.
41 Interview with Sister Shantilata who was the head *dsm* at Kundupoda and letters from Sisters Mahgoda Sumedha and Maitree of Nugegoda.
42 See W. L. King, *Theravada Meditation: The Buddhist Transformation of Yoga*, (University Park, Penna.: The Pennsylvania State University Press, 1980).
43 The *dsms* reported that they are often called upon by women who are experiencing family problems. They did not hesitate to confront the husband when they felt this was necessary.
44 Interview with Sister N. Dhammika.

45 Interview and correspondence with Sister Khemachari.

46 This is similar to the view of monks mentioned below.

47 Questionnaires returned to the Commissioner of Buddhist Affairs.

48 Interviews with Sisters Khemachari, Sudharma and Dhammika.

49 The material in this section is based on interviews with leading monks and 15 responses to a questionnaire sent to 49 Mahānāyakas in various parts of Sri Lanka.

50 In addition to speaking to many early lay supporters of the *dsm* movement, I surveyed lay attitudes at three sacred complexes: the Sri Mahābodhi at Anuradhapura, the Temple of the Tooth at Kandy, and the shrine at Bellanewila.

51 M. Ames, "Ideological and Social Change in Ceylon," *Human Organization*, Vol. 33. No. 1. (Spring, 1963) pp. 49–53 mentions that *vipassanā* was believed to bring health and happiness to the meditator.

52 Interview with Sister Khema and biographical note supplied by Sister Khema.

53 Interviews with Mrs. Irene Nanayakkara.

54 Sister Khema was invited to speak at the Island Hermitage but was prevented by the chief monk of the *nikāya*. She spoke to the laity on the mainland instead and they donated an island to her cause.

55 See *Daily News*, Saturday, Oct. 2, 1982, p. 9. In another acticle in the *Daily News*, Sister Khema calls for a women's peace corps in Sri Lanka while speaking to the *dsms* at Madiwala. She goes on to say that the *dsms* must be trained in teaching, social service and hospital work.

56 Letter from Mrs. Kusuma Devendra, January, 1984.

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"MERIT TRANSFERENCE" IN SINHALESE BUDDHISM

A case study of the interaction between doctrine and practice

Richard Gombrich

Source: *History of Religions* 11, 2 (1971): 203–19.

In the history of religions, it is a commonplace that practices survive the advent of new ideologies and are then reinterpreted. Ancient Roman authors were already aware that in their culture new names had been given to old cults; and, in the seventeenth century, it was the program of the Jesuits to give Christian meanings to the religious practices of India and China. Because part of the very *raison d'être* of a ritual is its repetition, its "timelessness," ritual systems seem endowed with a life of their own, a capacity for survival independent of the meaning they are given. Christmas trees and Easter eggs have survived the transition from paganism to Christianity and, in many cases, from Christianity to secularism. But, for the great oriental religions, comparatively few such transitions have been documented, since their study lags far behind that of Christianity.

The moral responsibility of the individual is a basic feature of early Buddhist doctrine, the teaching of the Pali Canon (and other versions of the canon in as far as they are known to us). It is the Buddha's solution to the problem of evil: one's suffering is due to one's former sin, in this or a previous life, just as one's well-being is due to one's former goodness. This is the Buddhist doctrine of karma ("action"); the term denotes both the original moral act and its power for subsequent reward or punishment. Moreover, the morality of an action depends solely on the intention behind it: intention (*cetanā*) *is karma*.[1] On the other hand, it is widely known that Buddhists developed what seems prima facie to run clean counter to the doctrine of karma, the idea and practice of transferring merit (good karma), so that one's good actions build up a kind of spiritual bank account from which one can make payments to others. (Incidentally, this is why the goodness of good acts has been reified into "merit.") Thus, apparently, a sinner may reap where another man has sown, and perhaps even obviate the

maturation of the seeds of evil he sowed himself. In the history of Buddhism, this "transference of merit" is often associated with the belief in bodhisattvas, who do good not only for their own spiritual advance toward nirvana but also to alleviate the sufferings of others. However in the Theravāda Buddhism of Ceylon, with which this article is primarily concerned, the "transference of merit" is fully developed, but the bodhisattva is of only minor importance.

My thesis is that the later, observable position logically can be, and in fact is, so interpreted (rationalized) as to conform to the former, canonical doctrine; and that this situation has evolved through the reinterpretation of ritual, a reinterpretation which can be traced through ancient texts and which is betrayed by shifts in the meaning of certain religious technical terms.

Since an article has recently been devoted to precisely this subject matter,[2] let me not attempt to do again what has already been well done, but use Dr. Malalasekere's article as far as it can take us and see where it leaves the problem. He thus describes the doctrine of "transference of merit" in Ceylonese Buddhism. "The doer of the good deed has merely to wish that the merit he had thereby gained should accrue to someone in particular, if he so wishes, or to 'all beings'" (p. 85). "The fact of 'transference' does not in the slightest degree mean that the 'transferer' is deprived of the merit he had originally acquired by his good deed. On the contrary, the very act of 'transference' is a good deed in itself and, therefore, enhances the merit already earned" (p. 86). One might add that the classical simile for this act of transfer, *patti* in Pali, is the lighting of one lamp from another.

A doctrinally associated way of earning merit is *anumodanā* or *pattanumodanā*, "which means 'rejoicing in'; the 'joy of rapport'. Here, the recipient of the transfer becomes a participant of the original deed by associating himself with the deed done" (p. 86).

Malalasekere raises the question (p. 89) "whether this doctrine . . . is a teaching of 'primitive' Buddhism," that is, whether it has always been a part of Buddhist doctrine. His implied answer is in the affirmative. Yet, to support this affirmation, he adduces only two pieces of evidence: the *Milindapañha*, which as he says is generally attributed to the first century A.D., and the higher ordination ceremony (*upasampadā*), at which the ordinand says that he offers his merit to his teacher and rejoices in his teacher's merit. This statement by the ordinand comes twice in the lower ordination ceremony (*pabbajjā*) which is reenacted before the *upasampadā* proper begins, not in the *upasampadā* itself.[3] The rest of the text of these ceremonies is to be found in the first book of the *Mahāvagga*, part of the canonical *Vinaya Piṭaka*, but the statements about transferring merit are not. Similar statements are, in fact, appended to all Sinhalese Buddhist rituals. Without denying the formula's "great antiquity" (p. 89), if the argument below is accepted, we may reach the unsurprising conclusion that the ordination ceremony contains at least one addition made after the time (whenever that was) when the ceremony was first standardized in roughly its present form. Thus, both Malalasekere's pieces of evidence are late, not "primitive."

Malalasekere not only reminds us that in Buddhism morality is a function of ethical intention alone, but also shows (p. 86) that this doctrine has been carried so far as to hold that rejoicing in the good deed of another may be more meritorious than performing the deed oneself. For example, a Sinhalese village monk who had spent 5,000 rupees on a public religious ceremony to celebrate his fiftieth birthday told me that a villager who felt sympathetic joy in the merit he was earning might thereby earn more merit than he did himself, without spending a cent. This seems to go further than the New Testament story of the widow's mite. Even if, like Kant, we accept an ethic of intention, the doctrine is not obvious; indeed, many moralists might find it startling. Moreover, I do not think that it was part of the original Buddhist doctrine.

Malalasekere has cited (p. 86) as "the classic example of the transference of merit" the ritual by which it is transferred to dead relatives; and he further implies (top of p. 88) that this is where the doctrine originated. I agree with his implication. Unfortunately, in his presentation of the ritual and its aetiological myth, he has conflated canonical and commentatorial texts, giving no references, to build up a single synchronic picture. I submit that, if we re-cover this ground with more discrimination, we shall see that the doctrine of merit transference has a detectable history.

To understand that history we must keep in mind the distinction between what people say and believe (conscious lies apart), which I call the cognitive level; how they act, which I call the behavioral level; and what their actions suggest to an outside observer that they believe, which I call the affective level. (Affective beliefs need not be consciously held or explicitly formulated.) I hope to show that the doctrine has developed through an interaction of these levels—behavior has affected doctrine and vice versa—and that its present status illustrates the disparity between cognitive and affective beliefs.

The Pali terms *patti* (proffering merit to others) and *pattānumodanā* (empathizing in another's merit) are not found in these technical meanings in what we might call the oldest organized stratum of the Pali Canon—the four *Nikāyas* and the *Vinaya Piṭaka*. The cognate verb *anumodati* is used in these early texts with two closely related meanings: "to agree with," and "to receive with gratitude," that is, "to thank." In the first meaning, Sāriputta says of a doctrinal debate: *na me koci bhikkhu anumodati*: "no monk agrees with me."[4] Parallel to the second meaning is the noun *anumodana*,[5] "gratitude" or "thanks." This word, from the beginning, is mainly used as a technical term for the thanks uttered by a monk on being given alms. This usage has been preserved unchanged until today in the Sinhalese *anumōdan*. The passage in the *Vinaya Piṭaka*[6] in which the Buddha prescribes the utterance of the *anumodana* and says that it should be said by the eldest monk present does not specify the content of what is said; although the Buddha doubtless composed his thanks variously to suit the occasion, one may assume the early use of some benedictory formula to the effect "May your desires be fulfilled," as is said today.

After any act of merit, typically a *dānē* (feeding monks), the doer of the merit

transfers it to the gods, either by reciting the following Pali verse or by giving assent ("*Sādhu sādhu*") when it is recited by a monk:

> *Ākāsaṭṭhā ca bhummaṭṭhā devā nāgā mahiddhikā Puññaṃ taṃ anumoditvā ciraṃ rakkhantu sāsanaṃ.* May sky-dwelling and earth-dwelling gods, [and] *nāgas* (supernatural serpents) of great power, having rejoiced at the merit, long protect the Teaching.

The verse may be repeated with "me" substituted for "the Teaching."

This transfer of merit to the gods is canonical. In the *Mahāparinibbāna Sutta*, the Buddha receives a meal from two ministers. "The Blessed One thanked (*anumodi*) them with these verses: Wherever a wise man dwells he should feed the virtuous and restrained ascetics there, and dedicate the gift (*dakkhiṇaṃ ādise*) to whatever deities are there; when worshipped they worship, when honoured they honour him."[7]

The text does not use the term *patti*, although the meaning expressed is the same; *patti*, however, is the commentator's gloss:[8] *Tāsaṃ dakkhiṇaṃ ādise ti sanghassa dinne cattāro paccaye tāsaṃ gharadevatānaṃ apadiseyya pattiṃ dadeyya.* " 'He should dedicate the gift' means that when the Sangha have been given the four requisites one should dedicate, give the merit to those housedeities." And the commentator significantly continues: " 'When worshipped they worship': they think, 'These people are not even our relatives, and even so they give us merit.' "

The commentator is, of course, much later than the text, but I think he is right about the implied origin of merit transference. We come, here, to a complex of ideas centering on those funeral feasts for dead relatives which are common to so many cultures. Prima facie they are perhaps an unexpected phenomenon in a religion which preaches constant rebirth, but Buddhism inherited them from its Indian Hindu background at a time when the rebirth doctrine was new. Professor von Fürer-Haimendorf describes how Chetris, a high Hindu caste in Nepal, can gain merit by having brahmins recite sacred texts for a week (*saptāha*): "If performed as a memorial rite the *saptāha* involves the gift of an entire set of household goods to the senior brahmin priest, and it is popular belief that as a result of this donation corresponding objects of personal use will be available to the departed for his life in the next world. The fact that such an idea is inconsistent with the belief in the immediate reincarnation of every human being in a shape conditioned by his earlier deeds does not seem to disturb the Chetris, who like other Hindus see nothing incongruous in the holding of apparently inconsistent views."[9] Buddhists, preserving a similar rite, are more concerned with doctrinal consistency.

One of the classes of living creatures (below gods, animals, and men but above demons) in the Buddhist universe is the *preta* (Pali, *peta*), a kind of hideous ghost usually suffering from hunger and other discomforts. The word literally means "gone forth," that is, dead; but the choice of term has been

determined by a linguistic coincidence in Pali which links *pretas* with Sanskrit *pitaras*—literally, "fathers"—the ancestors of the Hindu and the recipient of his funerary libations. The Buddhist *preta*, then, although in theory the reincarnation of anyone's relation, is in practice one's own dead relation, typically a dead parent.

The transfer of merit at the *dānē* for the dead (*mataka dāne*) must now be recapitulated. Such *dānēs* are given at certain fixed intervals of time after the death of a relative; their number and size depend mainly on the wealth and social status of the family, but the one after seven days is obligatory—it might be called the *mataka dānē* par excellence. It is preceded by the recitation of sacred texts, and at the end of their meal the monks are usually given "requisites" (towels, pillowcases, etc.), analogously with Chetri custom. Sometimes a little of the meal—for example, a handful of rice—is thrown outside the house; this is variously said to be for the *pretas* or for the crows. The crucial ritual takes place after the monks have been given everything: the head of the bereaved household slowly pours water into some small vessel until it overflows, while the monks intone in unison:

> *Yathā vārivahā pūrā paripūrenti sāgaraṃ*
> *Evam eva ito dinnaṃ petānaṃ upakappati.*[10]
> As the full water-bearing [rivers] fill the ocean, so indeed does what is given here benefit the dead (*preta*).
> *Uṇṇame udakaṃ vaṭṭam yathā ninnaṃ pavattati*
> *Evam eva ito dinnaṃ petānaṃ upakappati.*[10]
> As water rained on a height reaches the low land, so indeed does what is given here benefit the dead (*preta*).

The proceedings conclude with a short sermon on transience (*anityatā*) to console the mourners. At the end, instead of the general formula transferring merit to the gods given above, the house-holder (perhaps prompted by a monk) says:

> *Idaṃ me*[11] *ñātīnaṃ hotu. Sukhitā hontu ñātayo.*
> May this be for my relatives. May my relatives be happy.

While the pouring of water in Sinhalese ritual frequently signalizes a solemn act (e.g., marriage), here it seems more relevant to recall the libations poured to the Manes in other, older cultures. Here it has been reinterpreted as the verses explain. The reinterpretation of this symbolic gesture is a minor example of the type of reinterpretation which has operated on the ritual as a whole.

A Sinhalese village monk explained the proceedings to me thus. The death is primarily an occasion for doing merit (*pina*) oneself; secondarily, for offering it in case the dead man is expecting it. He can however only rejoice and benefit from the merit if reborn as a *preta*, because if he is higher than that he does not need the merit; if he is lower, in hell (*apāya*), he cannot get it. [There is in fact a

further refinement: only the top class of *preta*, "those who live on merit given by others" (*paradattopajīvin*) are able to sympathize with the merit of others.[12]] But this does not mean, he said, that the relatives giving the *dānē* assume that the dead man is now a *preta*, for if we pay a call we take the food along as a gift, but if the person is out we eat it ourselves; similarly, the *pinkama* earns merit for the living, whatever the fate of the dead. The origin of the custom of offering it to the dead is this, he said. Once King Bimbisāra gave the Buddha a *dānē*, and his ancestors, who were *pretas*, came to see it. He offered them no *pin*; so they were sorely disappointed. In the night there was a great noise round his palace, so next morning he went to the Buddha and asked if this boded ill for himself or his kingdom. The Buddha said not so, but explained what had happened. So, to remedy his oversight, Bimbisāra gave him a *dānē* that day too and offered the *pin* to the *pretas*.

The above statement contains small but telling points of doctrinal inconsistency: it is not clear why *pretas* who have already come to the *dānē* (as in the story of Bimbisāra) should be unable to rejoice at the merit unless it is specifically offered; nor why gods, who in other contexts are always offered merit, are in this context said not to need it. However, the latter discrepancy can be removed by saying that, while the gods are in no hurry for the merit, the *pretas* need it urgently, because they are suffering in a state of woe from which only *pattānumodanā* can relieve them, because they have little or no opportunity for performing meritorious actions independently. Remember, moreover, that length of life is one of the things that decrease as one goes down the cosmic scale; the Reverend Walpola Rahula has told me of a belief that *pretas* live only seven days, which makes it essential to catch them at that point before they sink further. He very plausibly connects this with a belief found in other schools of Buddhism (Mahāyāna and Sarvāstivāda) in an "in-between state" (*antarābhava*) lasting seven days; during this period the person is suspended between death and rebirth, and any improvement in karma will of course make the next birth a better one. I must stress that this *antarābhava* is not a Theravāda belief; it goes toward explaining the seven days *dānē* on the historical, not on the doctrinal, level. From this historical angle, it is also interesting to notice that in the Pali words just quoted the donor transfers merit to all his relatives, not just the recently dead man, thus reminding us that Hindu offerings are to ancestors (*pitaras*).

The *mataka dānē*, although not described in every ritual detail, is canonical in Theravāda Buddhism. In one sutta,[13] a brahmin says to the Buddha that brahmins give funeral feasts (*śrāddhā*; Pali, *saddhā*), praying that the gifts [given to brahmins on their behalf] may be enjoyed by their dead relatives, and he asks whether this really works. The Buddha at first replies that it does not work if the relative is reborn in hell, as an animal, as a human, or as a god, but works if he is reborn as a *preta*, in which case he lives on what his friends and kinsmen supply. In reply to further questions, the Buddha says that if the particular relative the donor had in mind is not a *preta*, other relatives who are *pretas* will

enjoy it, and it cannot happen that *no* relatives are reborn as *pretas*; but anyway no donor is without reward (*dāyako anipphalo*). In this text, no reference is made to the merit of the act; the gift is said to benefit (*upakappati*) the relatives and they to enjoy (*paribhuñjati*) it, so presumably the object passes to them direct. That all this is addressed to a brahmin points up the fact that the Buddhists were consciously adapting Hindu custom.

There are many references to the custom in a canonical book, the *Petavatthu*, which consists entirely of poems about *pretas*. The three verses cited above come from a poem entitled the *Ñātidhamma Sutta* ("The sutta of behavior due to relatives"),[14] which also occurs under the title, taken from the first words, of *Tirokuḍḍa Sutta* as the seventh item in the nine-item canonical chrestomathy, the *Khuddakapāṭha*. Here is Bhikkhu Ñāṇamoli's translation of the whole poem.

1. Without the walls they stand and wait,
And at the junctions and road forks;
Returning to their erstwhile homes,
They wait beside the jambs of gates.

2. But when a rich feast is set out
With food and drink of every kind,
The fact that no man does recall
These creatures stems from their past acts.

3. So they who are compassionate
At heart do give for relatives
Such food and drink as may be pure
And good and fitting at these times:

4. 'Then let this be for relatives;
'May relatives have happiness.'
These ghosts of the departed kin
Foregathered and assembled there

5. Will eagerly their blessing give
For (plentiful) rich food and drink:
'So may our relatives live long,
'Owing to whom we have this gain;'

6. 'For honour to us has been done,
'No giver ever lacked the fruit.'
Now there is never ploughing there,
Nor any cattle-herding found,

7. Nor merchandizing just the same,
Nor bartering for coin of gold:
The ghosts of the departed kin
Live there on giving given here;

8. As water showered on the hill
Flows down to reach the hollow vale,
So giving given here can serve
The ghosts of the departed kin.

9. As river-beds when full can bear
The water down to fill the sea,
So giving given here can serve
The ghosts of the departed kin.

10. 'He gave to me, he worked for me,
'He was my kin, friend, intimate.'
Give gifts, then, for departed ones,
Recalling what they used to do.

11. No weeping, nor yet sorrowing,
Nor any kind of mourning aids
Departed ones, whose kin remain
(Unhelpful to them acting) thus.

12. But when this offering is given
Well placed in the Community
For them, then it can serve them long
In future and at once as well.

13. The True Idea for relatives has thus been shown,
And how high honour to departed ones is done,
And how the bhikkhus can be given strength as well,
And how great merit can be stored away by you.[15]

The verses cited above were, in order, the ninth, eighth, and first half of the fourth. As Stede has remarked,[16] verses 11 and 12 (his 10 and 11) look like an addition. Moreover, until verse 12 there is no trace of Buddhism; dead relatives are to get food and drink and benefit their donors in return. Not until the end is there mention of the Sangha or of merit, and they are not well integrated. In the context of the poem, the "this" which is given to the relative in verse 4, line 1, is food and drink; only in the ritual as now performed and explained is it merit or, rather, the chance to rejoice at merit. It is this rather complicated explanation which has circumvented a doctrinal incongruity which originally must have been glaring. A vestige of the originally Hindu practice of actually offering food has moreover been preserved in the optional custom, noted above, of throwing a little food outside the house. Those who say this is for the crows are rationalizing, although in accordance with Buddhist ethics (kindness to animals); that it is for the *pretas* must be the ancient explanation. Note that the custom has persisted, with no logical congruity, throughout the doctrinal discussions about to be presented; but, since their effect has been to shift the emphasis of the ritual

entirely away from the food, it is not surprising that the handful of food for the *pretas* has declined to a barely noticed, even an optional, detail.

The story of the origin of the *mataka dānē* told me by the monk is taken from the commentary on the *Tirokuḍḍa Sutta*, Buddhaghosa's *Paramatthajotikā*. In the commentary, the thing offered is still explained as the food, etc., not the merit; but this is perhaps not an important point, since the general interpretation is clearly the modern one: the king gives a *dānē* to the Buddha and dedicates it (*uddisati*) to the *pretas*. More important is the story of this event given in the commentary to the *Dhammapada*.[17] The Buddha explained to Bimbisāra that after he had given the first feast the *pretas* had made a row because "when you gave the food they did not get the merit" (*dāne dinne pattiṃ alabhamānā*). When Bimbisāra therefore fed the Buddha the next day, "he gave the merit, saying 'Sir, may the divine food and drink from here accrue to those *pretas*' " (*Bhante, ito tesaṃ petānaṃ dibbannapānaṃ sampajjatū ti pattiṃ adāsi*). They get the food, then show themselves to the king naked. The king therefore gives robes (*cīvarāni*) the next day to the Buddha and his disciples, and the *pretas* accordingly are clothed in heavenly garments. At this, they leave the condition of *preta* (*petattabhāva*) and become gods (*dibbattabhāva*). "The teacher, giving thanks, used the words of thanks, 'Outside the walls they stand,' etc." (*Satthā anumodanaṃ karonto: tirokuḍḍesu tiṭṭhantīti tirokuḍḍānumodanaṃ akāsi*).

In this account, the spirits are getting not mere merit but more tangible benefits—food and clothes. However, they get the food and clothes as a result of getting merit—plainly an ambiguous situation. The question whether the *pretas* could actually eat the food was controversial in ancient times, even though that they could do so is the natural interpretation of the sutta I have quoted. In Nyanaponika's summary of the *Kathāvatthu*, a late canonical book (probably third century B.C.), question 69 is, "Can alms which are given here be enjoyed by beings elsewhere (e.g., by the . . . Petas)?" And we are told that two sects think that they can, but that Theravādins hold that "the mind of the Petas might be favourably influenced, but the material food cannot be enjoyed by them."[18] Although this seems to contradict the Theravādin commentaries just quoted, which in their present form are many centuries younger than the *Kathāvatthu*, it is very likely that the commentaries on this ancient custom are quoting an old story. But, whatever the date of the final victory of orthodoxy, it is clear that sensible Theravādin monks decided that food being visibly consumed by a monk could not possibly be eaten by someone else, so that, if people persisted in their habit of feeding dead relatives, the custom required reinterpretation. What the relatives were really getting was something else—merit.

Although we saw above that the offering of merit to the gods occurs in the four *Nikāyas*, the doctrine of *pattānumodana*, the acquisition of merit by anyone through empathizing in another's merit, does not. According to modern doctrine, such empathy can take place whether one is "offered" the merit or not. But the whole point of the story about Bimbisāra's ancestors was that they had to be offered the merit before they could get it, and the implication of offering merit

to the gods is that they, too, cannot get it just by being present—which they are in any case (note that the reference in the *Mahāparinibbāna Sutta* is specifically to the local gods). Moreover, even now in all standardized situations a verse or formula is recited offering the merit to specific benefactors. Why should the Pali verse be recited at the *dānē* offering the merit to the gods? The doctrinal answer (given by the monk already quoted) is that one is simply drawing their attention to the merit. The same reason can be given for the less institutionalized practice of carrying round among the laymen present an offering which one is about to make to the Buddha or the Sangha: the laymen fold their hands, touch or make to touch the offering with their fingertips, and then raise their hands to their foreheads in the gesture of worship; the person who is physically making the offering is drawing the attention of the others to his act of merit, and their gestures symbolize their participation. In this case, the doctrinal rationale fits. It does not, however, adequately explain what goes on at the ritual for the dead.

The reinterpretation of the *mataka dānē* is the nub of this problem; it can be followed by tracing the evolution of the meaning of *anumodati* from "thank" to "empathize," "rejoice in another's merit." In the poem quoted above, the verb *anumodati* is used of the *pretas* (poorly translated by Ñāṇamoli as "their blessing give"). Then, in the commentary, the Buddha, too, does an *anumodana*. Now observe what happens. The Buddhist givers of funeral feasts have been told by the monks that their relatives are not getting the food but are getting something else—merit. The whole point of the rite is to *give* your dead relative something, so the donors are satisfied, provided they still have the feeling they are *giving*. They give their merit away to the dead, like goods or cash, and the dead—presumably—say thank you (*anumodanti*). But no, say the monks; the doctrine of karma will not allow this; you cannot really give your merit away; you are just allowing the dead to improve their minds by expressing sympathetic joy at your good action in feeding us. So, although the text used in the rite says that the *pretas anumodanti*, this does not mean that they thank you for a gift, for nothing passes between you; they are just rejoicing.

This is where the meaning of *anumodati* undergoes its crucial change: as part of the doctrinal response to undoctrinal behavior. Once *anumodati* comes to refer just to a pure mental state, to empathy in doing good, it is of course open to anyone to do it at any time, without having to wait for an offer, and this is the modern position: the villagers could rejoice at the monk's fiftieth birthday celebrations without specific invitation.

But since *anumodati* was originally used both of the monk who gets the food and of the god or *preta* who gets the merit, the way is now open to linguistic confusion. That is, indeed, what we find in modern Sinhalese; for, while what the monk recites at a *dānē* is still called the *anumōdana*, according to modern doctrine it is not he who *anumodati*, rejoices, but the gods,—the third parties. We thus get the table (which I owe to a conversation with the Rev. Rahula) (table 1). In the table, the three participants (or groups of participants) are on the left; in the center are the actions they are performing in Pali, Sinhalese, and a

Table 1

Participants	*Actions Performed*			*Type of Good Deed*
	Pali	*Sinhalese*	*English*	
Donor	deti	denavā	gives	dāna
Monk	anumodāpeti	anumōdan karavanavā	causes to cause to rejoice	desanā
Donor	anumodeti	anumōdan karanavā	causes to rejoice	patti
Gods	anumodanti	anumōdan venavā	rejoice	pattānumodanā

literal English translation; on the right is the type of good deed (according to the Pali list of the Ten Good Deeds) which the action represents. The lines from top to bottom are in chronological sequence.

The Pali alone suffices to show that something has been twisted up here. In fact, the double causative form *anumodāpeti* is not in the dictionaries, and the plain causative *anumodeti* is cited only once,[19] in the quite different meaning "get the approval of."

The popular understanding of what goes on is rather different. It also corresponds to the historical view. The monk is understood to be saying "thank you," as indeed he was by original doctrine. The donor is then understood to be giving the gods his merit as a *quid pro quo*, as if he were buying their protection for cash. However, doctrine has been so successful that what I have just called "the popular understanding" is actually not explicit: when questioned, people either confess ignorance or give the orthodox explanation. The view of merit as spiritual cash is *affective* belief only. But its antiquity is nevertheless demonstrable.

Before drawing our conclusions from this contrast between cognitive and affective beliefs, it remains to document from Pali texts the changes in the use of the terms *patti* and *pattānumodanā* which culminated in the linguistic confusion just tabulated. The transaction of exchanging merit for supernatural protection is only possible after the complete separation of the merit earned by a gift from the gift itself, a separation which we saw took place at the *mataka dānē*. In that context, the "transference of merit" was made in the *Kathāvatthu* to conform to karma doctrine by talking of the good intentions of all concerned. But this explanation becomes more strained in our next example, in which the merit of a gift is given retrospectively. In a *Jātaka*[20] story, the bodhisattva, born as a brahmin merchant, has gained merit by feeding a *pratyekabuddha*; he is shipwrecked, and while swimming in the sea with an attendant is picked up by a deity whose duty it is to protect virtuous men in misfortune; she did not notice the attendant, so the "brahmin gave him the merit of his good deed, and he received it gratefully" (*brāhmaṇo attanā katakalyāṇato tassa pattiṃ adāsi, so anumodi*) and was

picked up.[21] Here we are very close to the idea of a fund of merit, like a bank account, to be drawn on at will. I stress that even this passage *can* be rationalized by reference to the doctrine of intention; but the more obvious interpretation of the passage would be to regard merit as a kind of spiritual money. And a characteristic of money is that when you have used it you no longer have it.

The equation of merit with money becomes virtually explicit in a story from the commentary to the *Dhammapada* about two brothers and some sugarcane. When the younger brother feeds a *pratyekabuddha* sugarcane from his brother's field, he thinks, "If my elder brother demands the price [of the cane] I shall give him the price, if the merit I shall give the merit" (*sace me jeṭṭhabhātiko mūlaṃ āharāpessati mūlaṃ dassāmi sace pattim āharāpessati pattiṃ dassāmi*).[22] Of course, this again is not a doctrinal treatise; but it is clear that the merit and the money are on an equal footing and that the giving of the merit will have nothing to do with benevolence or purity of thoughts. Here the incongruity of the transaction with doctrine may even be said to reach the cognitive level, for which I know of no modern parallel.

Finally, let me quote from a late commentary a passage in which both *patti* and *anumodana* occur. The words, though purporting to describe Visākhā and her friends after Visākhā has built a *vihāra* for the Sangha, could, translated into Sinhalese, be an exact transcription of modern procedure. Visākhā says to her companions,[23] " 'The merit I have earned, rejoice at it, I give you the gift of this merit.'[24] With gladly trusting minds they all rejoiced, 'Oh, it is good, oh, it is good.' One good lady who was there concentrated especially on that gift of merit. Soon after she died and was reborn in the Heaven of the Thirty Three" (*Yaṃ mayā puññaṃ pasutaṃ, taṃ anumodatha, pattidānaṃ vo dammī ti. Aho sādhu aho sādhū ti pasannacittā sabbā pi anumodiṃsu. Tattha aññatarā upāsikā pi visesato taṃ pattidānaṃ manasā akāsi*). This *anumodanā* of hers she describes[25] as a "pure rejoicing" (*suddh' anumodanā*) and hence truly meritorious. (This is in the canonical text, not merely the commentary). Although in this case the merit was offered, that "rejoicing" and not "thanking" is the appropriate translation is clear both from this passage and from the two previous passages cited.

We have here traced a correspondence between affective religion and an early behavioral deviation, appearing in Buddhist stories but never explicitly accepted by doctrine; doctrine has then made a comeback and harmonized practice with canonical theory, although not without becoming exceedingly tortuous (and philologically barbarous). The stages through which behavior evolved have been traced above: the behavior represented in passages dealing with *patti* represent gradual deviation from doctrinal orthodoxy, while the changed meanings of *anumodana* and its verbs represent the rationalizations of doctrine to accommodate the behavioral deviations. On the behavioral level, the passages first quoted for *patti* represent someone's giving their merit to another person and that person's saying thank you. Since the idea that one can give away merit contradicts a fundamental doctrine, this clear implication has to be explained

away, which is done, most ingeniously, by changing the meaning of *anumodati*. Although I know of no passage which is quite explicit on the point, the identity of the last passage quoted with modern practice strongly suggests that the modern doctrine, too, had been evolved by the time it was written. For this, it is significant that the good lady attributes her rebirth in heaven to the purity of her rejoicing (*anumodanā*). This comes not in the commentary but in a canonical text, albeit a late one, the *Vimānavatthu*. The entire evolution of doctrine and behavior with which we are concerned therefore took place, in all probability, within the ancient period, that is, the period up to the final closure of the Pali Canon and the stabilization of its exegesis; and what I have called the "modern" doctrine, although clearly different from the original doctrine, may be as much as 2,000 years old.

Malalasekere concludes (p. 89) that "there cannot, strictly speaking, be an arbitrary division of 'your' merit and 'mine.'" This is his own philosophical interpretation rather than a reproduction of canonical doctrine. We have tried, rather, to show that merit has always been thought of in personal terms, as belonging to an agent, and indeed has finally been reified to a remarkable extent, affectively becoming a transferable commodity.

The pure doctrine of karma has been preserved: man is entirely and solely responsible for his own fate, creating his own future by the moral quality of his intentions. But the very rigor of this doctrine of total self-reliance has called into being an alternate, parallel system, by which there are ways out. If doctrine cannot get rid of these ways out, it has to ignore them or, better, to reinterpret them. The transfer of merit to one's dead parents and the expectation that one will, in turn, receive merit from one's children is an excellent example of this alternate system and of its reinterpretation.

Finally, let me put it another way. The original doctrine of karma solved the intellectual problem of evil, but the solution was too perfect for emotional comfort, because it makes all suffering one's own fault. The doctrines of *patti* and *pattānumodanā* in turn solve, or at least alleviate, this emotional problem by mitigating the rigor of the original doctrine and, in particular, by making it possible to improve one's karma after death; at the same time, they solve, by reinterpreting them, the intellectual problem of justifying surviving rituals for the dead. Moreover, a sociologist might add that, although the Buddhist doctrine of karma is purely individualistic, merit transference can make merit appear as the common property of a social group, so that *patti* is functional for kinship solidarity. I consider its problem-solving function for the individual to be more clearly demonstrable and more important. But, certainly, the present situation is overdetermined, which accounts for its survival for over 2,000 years.

Notes

1 *Anguttara Nikāya* III. 415.
2 G. P. Malalasekere, "'Transference of Merit' in Ceylonese Buddhism," *Philosophy East and West* 17, nos. 1–4 (January–October 1967): 85–90.
3 J. F. Dickson, *Ordination in Theravāda Buddhism*, ed. Piyadassi Thera, Wheel Publication, no. 56 (Kandy, 1963), pp. 12, 14.
4 *Anguttara Nikāya* III. 194.
5 Rarer forms parallel to *anumodana* (neuter) are *anumodanā* (feminine) and *anumodanīya* (neuter).
6 *Vinaya Piṭaka* (ed. Oldenberg) II. 212.
7 *Dīgha Nikāya* II. 88 (sutta XVI. 1. 31).
8 *Sumangala-vilāsinī* II. 542.
9 C. von Fürer-Haimendorf, *Morals and Merit* (London, 1967), p. 168.
10 An alternative version has it as a wish: *upakappatu*, "may it benefit."
11 Thus a Sinhalese manual in my possession. The Pali Text Society edition of the *Petavatthu* has *vo* "your" (plural) for *me* "my," but the general meaning is unaffected since *vo* agrees with *ñātīnaṃ*.
12 Thus, e.g., *Milindapañha*, p. 294. The monk's explanation in the next four lines also occurs on the same page.
13 *Anguttara Nikāya* V. 269–73 (sutta CLXXVII).
14 *Petavatthu* I. 5.
15 Ñāṇamoli, trans., *Minor Readings and Illustrator* (London, 1960), pp. 7–8.
16 Wilhelm Stede, *Die Gespenstergeschichten des Petavatthu* (Leipzig, 1914), p. 63.
17 *Dhammapada Atthakathā* I. 103–4.
18 Nyanaponika, *Guide through the Abhidhamma-Piṭaka*, 2d ed. (Colombo, 1957), p. 71.
19 *Paramattha-dīpanī* VI (*Therīgāthā Atthakathā*) 201, line 9. Even this is uncertain, since there is a variant reading.
20 *Jātaka* IV. 15–22.
21 *Jātaka* IV. 21.
22 *Dhammapada Atthakathā* IV. 200.
23 *Vimānavatthu Atthakathā*, p. 188.
24 The translation cannot convey the full ambiguity of *patti*.
25 *Vimānavatthu Atthakathā*, p. 189 = *Vimānavatthu* 44. 9 (p. 40).

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NARRATIVE, SUB-ETHICS, AND THE MORAL LIFE

Some evidence from Theravāda Buddhism

Charles Hallisey and Anne Hansen

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The intent of this article is to explore the extent to which we can apply to Buddhist ethics Martha Nussbaum's statement that "[l]iterary form is not separable from philosophical content, but is itself, a part of content—an integral part, then, of the search for and the statement of truth" (Nussbaum 1990, 3). We explore the transformative impact that narratives can have on moral life, using examples from the story literature of Theravāda Buddhist traditions in Sri Lanka and Southeast Asia. Focusing on what Geoffrey Harpham has called "sub-ethics," the conditions that center moral life, we trace the ways in which narratives prefigure, configure, and refigure these conditions for human flourishing.

It is not easy to specify—in a manner that both uses the first person plural and is responsible to the self-understanding of others—what are or should be among the proper concerns of an academic community studying Buddhist ethics. Even "Buddhist ethics" as the designation of a scholarly focus, one that can be the subject of a cluster of articles in the *Journal of Religious Ethics*, can generate considerable uncertainty for an uninitiated student of Buddhism or ethics who might happen to listen in on our collective discussions about the purposes of and methods for studying Buddhist ethics. Ours is a motley academic community that makes appeals both to cross-cultural interpretive perspectives that tend to highlight historical particularity and to universalist analyses that originated historically in the modern West. To the student of Buddhist cultural history, our community may thus appear to use the historical heritage of the various Buddhist communities merely as grist for another culture's philosophical mill. To the student of contemporary philosophical ethics, the historical concerns of some members of our community may appear to be a recalcitrant obsession for

description rather than analysis; from this point of view, we might be accused of a positivist obstinacy that can only encourage a confusion between moral conventions and ethics—a confusion that will not only ultimately prevent us from identifying and evaluating the principles that organize and justify the moral life of Buddhists in different times and places but will also generate an unreflective moral relativism in us.

Such dichotomies are familiar in a variety of particular guises to those of us who already consider ourselves engaged in studying Buddhist ethics, and they structure in an increasingly refractory manner many of our own discussions about what we are doing. They are readily apparent in, to give but one example, the essays collected in *Ethics, Wealth, and Salvation: A Study in Buddhist Social Ethics*. As Russell Sizemore and Donald Swearer, the editors of that volume, say:

> The question of how Buddhist ... ethics are to be interpreted also lies at the heart of [their collection]. Is the analysis to be derived solely or largely in terms of the categories of the doctrinal and historical traditions of Theravāda Buddhism? Or are there legitimate cross-cultural and comparative interpretive perspectives, derived historically ... or philosophically ... ?
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> [Sizemore and Swearer 1990, *xiii*]

Sizemore and Swearer quickly add that their collection "makes abundantly clear [that] interpretive or methodological consensus does not come easily in [the] emerging field of comparative religious ethics" (*xiii*), and their comment is equally valid for the field of Buddhist ethics—whether it is construed as a subfield of comparative religious ethics, of ethics in general, or of Buddhist Studies.

It is worth noting that dichotomies of this sort are not unique to the community of scholars concerned with the study of Buddhist ethics. They represent concerns and doubts that we share with others who pursue the study of ethics as articulated in other traditions. Indeed, "within the modern era the field of religious ethics has been notoriously difficult to define in its relationship to philosophical ethics, philosophy of religion, and philosophy in general" (Sizemore 1990, 87). We take comfort in knowing that such problems are not unique to the study of Buddhist ethics, and rather than trying to suggest an inevitably inadequate resolution to these methodological dichotomies, this essay will initially add to the lack of consensus in our field by exploring another area of interest that is appropriate for those of us engaged in the study of Buddhist ethics. We believe, however, that sustained attention to areas of investigation like this will tend, in the end, to soften the dichotomies that structure our discussions. That is to say, we think that new areas of research, when they do not fit easily within one or another well-established pattern of interpretation, provide us with a different vantage point from which we can become aware of, reconsider, and, if need be, change our conventional interests and methods.

The primary concern of this essay does not lend itself to being discussed

within the traditional vocabulary of Theravāda Buddhism, but at the same time it is more descriptive than philosophical, especially if one understands the latter as an evaluative analysis of a particular moral position. Since the dichotomies of history/ethics, description/analysis give us little help with our topic, we will set them aside in favor of another contrast that brings us directly to our concern. In his well-known essay "Rethinking Intellectual History and Reading Texts," Dominic LaCapra distinguishes between two approaches to the reading of complex texts. One approach focuses on those "documentary" aspects of a text that situate it within an empirical reality and convey information about that reality. In contrast, the "worklike" dimension of a text is

> critical and transformative, for it deconstructs and reconstructs the given, in a sense repeating it but also bringing into the world something that did not exist before in that significant variation, alteration, or transformation. With deceptive simplicity, one might say that while the documentary marks a difference, the worklike makes a difference—one that engages the reader in recreative dialogue with the text and the problems it raises.
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> [LaCapra 1983, 30]

Curiously, when they are viewed from the perspective afforded by LaCapra's distinction, both the "historians" and "ethicists" among those studying Buddhist ethics appear to have approached their subject with a primary concern for the documentary, since both have been preoccupied with the differences marked by Buddhist moral literature. The differences between them may be reduced to a disagreement, albeit an important disagreement, over the "empirical reality" in which Buddhist ethics is most significantly situated. On the one hand, historians tend to situate Buddhist ethics in the Buddhist tradition as a whole, and thus mark its difference as "Buddhist," while the ethicists tend to situate Buddhist ethics within "the general relationships among religion, morality, and reason" (Sizemore 1990, 91; see also Reynolds 1990, Little 1990), and thus mark its difference with respect to ethics in general or to religious ethics in particular.

In contrast, our attention in this essay turns more to what LaCapra calls the worklike aspects of Buddhist texts and their transformative impact on the moral lives of Buddhists. We see LaCapra's distinction as opening up a productive way of understanding the role of story literature in the moral lives of Theravāda Buddhists because it encourages us to focus on a few aspects of what Geoffrey Harpham has called "sub-ethics" (Harpham 1992, 2). Harpham introduces this term in his *Getting It Right*, a rich and ambitious book that attempts to discover new ways "to understand what constitutes 'ethics itself' " (20). He does this in a variety of ways, from closely examining the "discourse of otherness" in ethics to the manner in which conversion is "the mark of the ethical" (107), but with respect to our interests here, his discussion of the "ethics of language" has been the most productive. He suggests that "[w]hat language 'infallibly' does is to

serve as the medium in which we become adept at ethical thought" (100). "Accordingly, [he argues] that the ethics of language do not reside in the way *it* orients *us* towards or against certain values, but rather in the fact that language use itself requires certain recognitions and kinds of choices essential to ethics. It is the presence of these recognitions and choices in language that makes language itself seem to have an ethical dimenstion" (4). It is this dimension that Harpham calls the subethical, insofar as this term refers to the most basic and inevitably under-determined conditions and characteristics of ethical discourse and moral life. Encouraged by Harpham's example, we are especially concerned in this essay with the manner in which Buddhist narratives "make a difference" by realizing, in the strictest sense of the word, "certain recognitions and kinds of choices [that are] essential to ethics." To that end, we will trace three different ways in which moral life is enabled by narrative: *prefiguration* (the effect of narratives in enlarging an agent's moral horizon), *configuration* (the power of narratives to expose the opaqueness of moral intention), or *refiguration* (the healing and transformative potential of narratives).[1]

In the space of this essay, we can only explore the dialogic impact of narrative on moral life quite selectively, but while our examples are by no means exhaustive or systematic—either with respect to the scope of sub-ethics in Buddhist ethics or with respect to the role of narratives in Theravāda Buddhist ethics, not to speak of their role in Theravādin cultural life more generally—we think that they are sufficient to suggest a number of new directions for the study of Buddhist ethics: they change our estimation of material that we may have previously thought that we knew well or at least adequately; they illustrate the value of enlarging the domain in which we expect serious ethical thought and practice to take place; and they require us to consider whether there are significant aspects of Buddhist ethics which may remain invisible within the tradition's own terminology. In short, we think that they usefully enlarge our perception of what should be among the proper concerns of students of Buddhist ethics.

1. Story literature and the study of Buddhism

It was once a standard practice in Buddhist Studies to join a model of the sociology of knowledge presumed to be operative in all religious communities, including the Buddhist, to the simple recognition that Buddhists have always told a lot of stories. This model usually portrayed sophisticated Buddhists as employing stories, including some that are not particularly "Buddhist," to communicate doctrines that the Buddhist *lumpen* could not otherwise understand. Hand in hand with this came the corollary that such stories, although intended as illustrations of Buddhist doctrine, have frequently distorted it, and thus could never be taken as representative of "real" Buddhist thought. Strikingly, there is some evidence that certain Buddhist thinkers themselves have held this view, including Buddhaghosa, the greatest of Theravādin systematic thinkers and commentators (Griffiths n.d.). While there is also considerable

evidence that raises important doubts about the general accuracy of this composite interpretive model, it is now so embedded in the general scholarly consensus about what constitutes proper Buddhist thought that it has become completely naturalized in the scholarly literature about Buddhism. As a result, while Buddhist story literature has been analyzed sociologically, often with great sensitivity and insight, rarely has any serious attention been given to the ethical significance of either the form or the content of the stories themselves.

Recently, this unnecessarily exclusive correlation between the obvious didactic function of story literature in various Buddhist communities and an implicit two-tiered sociology of knowledge presumed always to be found among Buddhists has happily been exposed, and the automatic depiction of story literature as evidence of processes of vulgarization among Buddhists is now questioned by many students of Buddhism. The new appreciation of the value and integrity of Buddhist story literature is evident in the following statement by John Strong:

> The volumes of the Pali canon which neatly line the shelves of buddhologists in the West are generally not found in the bookcases of Buddhists in Southeast Asia. What is there is mostly "extracanonical": jātakas (stories of previous lives of the Buddha), collections of legends from the commentaries, tales of the adventures of saints, accounts of other worlds, anisamsas (stories extolling the advantages of merit making), ritual manuals, anthologies of sermons, secular tales, historical chronicles, grammars and primers. For most Buddhists, these are the sources that are read and repeated, the texts that best illustrate the Buddha's teaching.
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> [Strong 1992, *xi*]

Similarly, Gananath Obeyesekere has observed that stories "were once the lifeblood of everyday Buddhism, yet ... [they] are almost never part of the scholarly discussion in the modern literature of Buddhism. [The] almost total neglect [of stories] in Buddhist Studies is because they have been relegated as unimportant folktales that have little to do with the profoundly philosophical corpus" (G. Obeyesekere 1991, 231). In the same vein, Ranjini Obeyesekere comments, "Looking back on my childhood, I realize we were never given religious instruction as such, either in school or at home. We participated in Buddhist rituals and ceremonies ... and listened to many, many Buddhist stories. That was how we learned to be Buddhists" (R. Obeyesekere 1991, *x*).

We thus find ourselves in the position of having to ask (as if for the first time after a century of intensive, productive scholarship), What did Buddhists learn from their stories and how did they learn from them?[2]

As we become more aware that the conventional interpretive model was largely projected onto Buddhist evidence, we discover that there are other models within the Buddhist traditions that suggest valuable interpretive alternat-

ives, even as they raise important new questions. For example, the modern Burmese author Ledi Sadaw, writing earlier in the twentieth century, said that Buddhist truth (*Dhamma*)

> is taught in two ways: in formulas suitable for memorizing over long periods of time, and in instruction imparted directly and specifically to *individuals*. By the former method the matter is analyzed either in outline or in detail, without regard as to whether perplexities may arise or not. But by the [the method for] the individual, his special perplexities are met by the clearing away of some complexity.
>
> [Ledi Sadaw 1913–14, 116]

That stories are good examples of an instruction imparted directly and specifically to individuals is clear from standard Theravādin commentarial, by which commentators always explain not only the occasion on which a story was originally told but also the audience to which it was told. Of course, we can recognize here a comparison between abstract doctrine and narrative that is very different from the familiar one long used in Buddhist Studies, and we note especially that both abstract doctrine and story are defined in Ledi Sadaw's model by a practical function. Neither abstract doctrine nor narrative is automatically more correct than the other. For our purposes here, it is more striking that Theravādin commentators apparently recognize the significance of the worklike aspects of Buddhist narratives themselves. That is, they see that a story transformed the person to whom it was told, although they typically recognize this in a manner that links a story definitively to its *first telling*.[3] Their approach, however, does not directly help us to understand what happens when people continue to tell these stories in new contexts. The retelling of stories creates a situation in which we can never hope to ascertain *the* context for a given story, even though, somewhat paradoxically, stories are directed directly and specifically to individuals.

As cultural historians of the various Buddhist traditions know all too well, as yet we know very little about what individual Buddhists did in particular historical circumstances, and it is unlikely that we will ever recover all that we would like to know. There will be very few instances where we will have an independent historical witness to the impact that the retelling of a story may have had on a particular individual. Attention to the worklike aspects of the texts may help us to educate our imaginations, such that we do feel that we have a reasonable idea about what subsequent Buddhists (as distinct from the hypothetical first audience established by a commentator) might have learned from a story—if only because our own horizon of values and expectations is altered by our attempt to think through the possibilities of a text.

Before turning to the specific ways in which narratives prefigure, configure, and refigure moral life, it might be useful to illustrate what we mean when we speak of the alteration of our own horizon; a general example can be drawn from the various Jātaka collections. The Jātakas are the stories about the Buddha's

previous births, and they number in the many hundreds. The origins of the Jātakas are often unclear, and modern scholars frequently dismiss them as Indian folktales with a thin veneer of Buddhist doctrine. However, this dismissal seems inconsistent with their ubiquity historically throughout the Buddhist world, and some of the earliest evidence we have for Buddhist literature is found in sculptured representations of scenes from particular Jātaka stories. As is well known, many of the Jātakas have animals as their protagonists. We suspect that this particular aspect of Buddhist story literature has been a crucial catalyst in the modern tendency to discount the Jātakas as mere folktales. It is one thing, however, to identify the reason for the neglect; it is another thing to suggest a different, more productive way to interpret and explain such stories.

One possibility is that these stories are like those found in the Dr. Doolittle collections (Lofting 1988), insofar as the accounts of the society of animals in the latter provide a reflection of what the human world would be like without the human propensity to duplicity and malevolence. But while it is the case that many animals in Buddhist story literature are possessed of a high moral character, this is by no means a universal trait. They can lie and cheat with the best of us.

The comparison with Dr. Doolittle, although misleading in terms of the content of many Jātaka stories, does suggest that their significance lies in their ability to enable us to appreciate the ethical significance of our coexistence with other humans, even as they portray a world that is quite dissimilar to our ordinary experience. More particularly, the Jātakas may be understood as acts of social imagination, playing a role analogous to the role of utopia and ideology in the modern West (see Ricoeur 1994, 129–34). We can begin to appreciate the functional significance of all three examples of social imagination in general and of animal stories in the context of Buddhist life in South Asia in particular, if we recall Paul Ricoeur's comment that "[t]he truth of our condition is that the analogical tie which makes every man another like myself is accessible to us only through a limited number of *imaginative practices*, such as *ideology* and *utopia*" (Ricoeur 1994, 129).

There are important historical and sociological reasons why animal stories would be attractive as a vehicle for establishing analogical ties between people in South Asia. We must remember that in the past Theravāda Buddhists generally found themselves in social worlds in which humans were typically understood as significantly determined by their social location—by caste and gender especially, but also by class and ethnicity—and that it was not uncommon in these worlds to link moral differences to social location.[4] The Jātaka stories suggest that such cultural constructions of human difference were not at the absolute expense of an awareness of human similarity. Using animals as ethical examplars provides a way of discussing generic moral virtues—gratitude, generosity, loyalty—without any misleading references to specific social locations. That is, the use of a human exemplar would inevitably run the risk of obscuring the proper perception of moral action, and of the causes and effects of that

action, because there would be the possibility that a reader or listener would interpret that action within the local social framework. Animal protagonists could only rarely be correlated with a particular social location among humans, and stories about animals would inevitably require members of their human audience to stand outside the conventions and prejudices of their particular societies. Thus, when we read in the *Kapota Jātaka* (*Jātaka* 1.242–44) about a deceitful and greedy crow, we cannot easily take its message allegorically as being about the moral nature of a particular group of humans, but only about humans in general.[5] Nor do animals in the Jātakas exhibit what we would take to be their biological instincts: moral snakes in the Jātakas do not bite.[6] Thus, far from being a cynical strategy to hold the attention of "the popular mind," the use of animal stories among Buddhists appears to be a sophisticated imaginative practice, one which is a creative response to the social patterns that Buddhists shared with their non-Buddhist neighbors.

2. Moral life prefigured

Obviously, not all Jātaka stories (much less all Buddhist narratives) are about animals, nor are they all instances of an imaginative practice which creates analogical ties (empathetic bonds of solidarity) among persons who live in socially divided worlds. In fact, the majority of Buddhist narratives are not of this type. Still, these other narratives function in a comparable way as aids for the cultivation of a sense of sympathy toward those who are quite different from oneself.

As is probably well known, both experientially and theoretically, to all readers, through narrative we are able to imagine ourselves in the place of another. It might also be said that when, in reading, we leave aside our own social location, with its constitutive cares and perspectives, and enter imaginatively into the experience of a character in a narrative, we cultivate capabilities that are necessary to all moral agency. Since it is the case that "when people think about other people, they think about them in a certain way, as having thoughts, plans, ambitions, and knowledge like themselves" (Carrithers 1992, 59), it is equally important that they also cultivate a sub-ethical capacity to recognize that the "thoughts, plans, ambitions, and knowledge" of others are often quite different from their own. As Lynn Tirrell has said in her essay "Storytelling and Moral Agency," "the essence of morality is a 'going out of our nature' or a lack of self-centeredness that is common to nearly all views of morality," and the sub-ethical conditions for this other-directedness are generated in narrative (Tirrell 1990, 119).

We think that this sub-ethical recognition of the experience of an other is well illustrated in a story in the *Dhammapada* commentary which is attached to a verse about hatred never ceasing by hatred (*Dhammapada Aṭṭhakathā* 1.45–53).[7] The story is long and emotional, but the main events can be summarized briefly:

A woman discovers that she is unable to have children and arranges for a second wife to be brought into her household on the pretense that she wants the

woman to give her husband a child. In reality, she conspires to prevent the second wife from giving birth. Twice, the second wife conceives and the first wife puts poison in her food to cause a miscarriage. The third time the second wife becomes pregnant, the first wife waits to administer the poison until the woman is about to give birth. As a result, both mother and child die in childbirth, but as she is dying, the second wife realizes what has happened. She vows to be reborn as a demoness and to devour the first wife's children in a later life.

A cycle of rebirths follows. The first wife is reborn as a hen whose eggs are eaten three times by a cat. The hen vows revenge against the cat's offspring in a later life. The hen is reborn as a tigress who three times eats the young of a doe and eventually kills the doe. As the doe dies, she vows to be reborn as a demoness who will devour the tigress's offspring. The doe is reborn as a demoness and the tigress as a noblewoman. Twice, the demoness devours the noblewoman's children just after they are born. The third time the noblewoman becomes pregnant, she decides to return to her natal home to escape the demoness. The demoness follows her and again attempts to devour the newborn child.

Up to this point, the narrative is an illustration of the moral truth that "hatreds can never cease by hatred" (*Dhammapada* vs. 5). The plot then turns, with the woman grabbing her baby son and running to the Buddha, who is staying nearby. She places the child on the Buddha's feet and begs the Buddha to protect him. The Buddha asks that the demoness be brought to him, and when she arrives, he preaches to her that hatred can only be ended and not satisfied. The sub-ethical dimension of the story becomes particularly apparent when the Buddha turns to the mother and directs her to give the child to the demoness to hold. The mother is terrified by this request, but she eventually complies, handing her child to the demoness. The demoness holds and caresses him, and then, as she is handing the child back to his mother, she begins to weep.

By the time the demoness weeps, we recognize it as an expression of sorrow, guilt, catharsis, fear, and more. Through our involvement in the story, we have somehow been brought to a degree of sympathy for a reprehensible character and have lost any inclination to reprove her. In a masterful way, then, the story brings us to the point at which we are simultaneously involved and detached, allowing us to see how certain kinds of action can be simultaneously self-destructive and self-serving even as we feel for the beings who engage in such actions.

The ethical significance of this sub-ethical capacity to "transfer in the imagination ... my 'here' to your 'there' " (Ricoeur 1994, 128), and to do this even with a person who is morally opposite to oneself, is profound. It clearly strikes a distinctive chord in Buddhist moral practice, too, if we think of the general approbation of compassion in all of Buddhist ethics.

Moreover, it may also provide a grounding for the heterogeneity of judgment that typically nuances Buddhist moral experience as it is displayed in narratives:

wicked actions are condemned even while the doer of those actions becomes the object of sympathy and concern. A good example of this heterogeneity of judgment is the story of the robber Aṅgulimāla.[8] He is a student who is commanded by his teacher to bring a garland of a thousand fingers. Aṅgulimāla dutifully begins to assemble it, hence his name, "garland of fingers." As the narrative says, he was "most terrible. His hands are wet with blood. He has no pity for any. He has made villages no villages, towns no towns, he has made provinces no provinces. When he has slain, he pierces the fingers of the dead and puts them together in a necklace and wears it" (C. Reynolds 1970, 62). And yet the Buddha, perceiving the spiritual capacity of Angulimāla, set out to meet him, out of a desire "to do service to this robber" (C. Reynolds 1970, 60).

There are thus two different sub-ethical roles that narrative can have in Buddhist ethics. First, it can help us to perceive the generic nature of persons, such that we are better able to perceive universal obligations and rights in a world characterized by social diversity. Second, the narrative form portrays "complex nets of deeds and attitudes" (Carrithers 1992, 82) in a manner that inevitably requires sympathy on our part, such that when sympathy with and concern for particular others are advocated as desirable moral values, we are immediately able to recognize their import.[9] While these two functions are different from each other, they both draw our attention to the fact that the narrative form itself seems to have an ethical dimension apart from any particular content in a given story because the very act of understanding any story prefigures a moral relation towards others that is required for an ethical intention (cf. Harpham 1992, 4). In short, narrative prefigures moral life because it cultivates a capacity of imagination that is essential for ethical action.[10]

3. Moral life configured

We turn now to another way that narrative conditions moral life, one which we will call configuration, again adopting a term used by Ricoeur. We understand configuration to be the imaginative arrangement of moral life in a manner that acknowledges not only its conditioning by other values and conceptions of life in the world but also the limitations which "reality" may impose on our visions of human flourishing. Narrative seems particularly appropriate as a vehicle for ethical configuration; as Martha Nussbaum says, there are

> some views of the world and how one should live in it—views, especially, that emphasize the world's surprising variety, its complexity and mysteriousness, its flawed and imperfect beauty—that cannot be fully and adequately stated in the language of conventional philosophical prose, a style remarkably flat and lacking in wonder—but only in a language and in forms more complex, more allusive, more attentive to particulars.
>
> [Nussbaum 1990, 3].

An example of ethical configuration can be seen in a Pali narrative about the opacity of karma in human experience. Much has been written about Buddhist philosophical understanding of karma as a law of moral cause and effect; however, when we read this scholarship, we often come away with the feeling that these discussions remain incomplete, since the abstract analysis of the doctrine of karma gives us little insight into what it feels like to live in a world structured by karma. Modern students of Buddhism do not learn as much as they could from Buddhist narratives. In particular, they rarely attend to the imaginative insights that narratives can provide about the complex experiences common in Buddhist life, even though Buddhist narratives are often surprisingly informative in this regard, yielding insights which go against the grain of what we might otherwise expect on the basis of the abstract doctrines. This is certainly the case with karma. The following story provides an account of the experience of karma that we think is rarely acknowledged in scholarly literature about karma. It is about Bandhula, an honest judge who, together with his wife, Mallikā, had sixteen sets of twin sons.[11]

> One day, some people who were defeated in a false suit met Bandhula and reported to him how their case had been unjustly decided by the investigating ministers. So he went to the law-court, brought the case to judgment, and thus made the real owner the owner [of the disputed property], to great public applause. Hearing about that, the king inquired into the matter, dismissed the [guilty] ministers, and appointed Bandhula as minister of justice. Thenceforth, cases were decided properly.
>
> Then the former judges, being unable to receive bribes any more, became poor. They slandered him to the king, saying, "Bandhula desires your kingdom." The king believed them and ordered men to plunder a frontier region; he then sent orders to Bandhula: "There is a disturbance in the frontier region. Go with your sons and catch the thieves." Then he sent other able warriors after them, saying, "Behead Bandhula and his thirty-two sons in that place." They did as instructed.
>
> On that day, Mallikā had invited the two Chief Disciples of the Buddha, along with five hundred monks [for a meal]. Then early that morning, a letter was delivered to her with the news that her husband and sons had been beheaded. Learning this, she said nothing, but tucked the letter away in her dress and served the company of monks.
>
> Now, one of her attendants, when bringing in a jar of clarified butter, happened to break it just in front of the Elders. Sāriputta, the Captain of the Dhamma, said, "The breakable thing is broken; it is not to be worried about." She then took the letter out of the folds of her dress, and said, "They have just brought me this letter: 'The head of your husband has been cut off as well as the heads of your 32 sons.' Yet even when I heard this, I did not worry; why should I, Sir, trouble myself by thinking about a broken butter-jar?"

> Sāriputta preached a sermon to her and returned to the monastery. Mallikā summoned her 32 daughters in law and admonished them, "Your husbands were free from guilt and have merely reaped the fruit of misdeeds in previous states of existence . . ."

If we take seriously a story like this, we need to wonder whether there is an important gap between the well-known explanatory functions of karma, analyzed so well in modern scholarly literature, and the actual experience of karma in ordinary life. We feel that this story is quite realistic in its portrayal of an ordinary experience of karma, with all its unresolved contradictions between responsibility and innocence: *innocent Bandhula got what he deserved*. Thus, although, following doctrine, one may want to say unconditionally that there is no undeserved suffering and although the fact that beings experience more than one life would seem to avoid the problem of an innocent suffering, this story allows more than enough space for any person to feel—justifiably—that this particular bit of suffering is unwarranted, that it is due more to the malevolence of others, or bad luck, than to one's own responsibility. Acceptance of rebirth as a fact of human life does not diminish the story's insistence on Bandhula's innocence, and the story does not restore the presumed justice of karma by explaining what deeds had these events as their fruit. This frank depiction of conflicting attitudes, without flinching and collapsing one into the other, is what is impressive about the story. It gives voice simultaneously to multiple descriptions of the same events—tragic events—without giving us the information sufficient to choose which is the correct version: we, like his widow, can only affirm that innocent Bandhula got what he deserved. This is precisely what we mean by ethical configuration: the opacity of karma displayed in the narrative profoundly configures moral life by undermining any confidence we might have in our ability to identify the karmic results of any particular action that we plan to do. In other words, the story seems to preclude an attempt to describe an ethical intention as good by recourse to the perceived results that it will have for oneself.

Although "prudential arguments in favour of moral conduct have a long and respectable history in Buddhism," the story of Bandhula should cause us to reconsider the validity of the observation that "by the law of karma every intention good or bad will eventually be rewarded or punished, so prudence and true morality must necessarily coincide" (Gombrich 1971, 246).

The story of Bandhula is hardly unique in its emphasis on the opacity of karma. We can see a similar emphasis on karma's opacity used to dramatic effect in the well-known story of Paṭācārā. Though this story is told in various canonical and commentarial versions, we will use as our basic point of reference some oral versions collected by Anne Hansen from Cambodian refugees. Paṭācārā was the beautiful daughter of a wealthy man who built a seven-story tower in which she was to live. She fell in love with her servant, and when her parents betrothed her to a man of the same social standing as herself, she ran

away with the servant to a remote village. She subsequently gave birth to two sons, each of whom was born on the road as she attempted to return to her parents' home for the deliveries. While she was in labor with the second child, her husband was bitten by a snake and died. She decided to take her sons to her parents. On her way, she needed to cross a river but was unable to carry both sons at the same time. Having set the baby down on the far bank, she was in the middle of the river, returning for the second child, when a hawk suddenly swooped down and carried off the infant. As she made an attempt to frighten off the bird, the toddler fell into the water and was drowned. Filled with grief, Paṭācārā returned to her parental home only to learn that her parents and brother had all been killed when the tower collapsed on them. On hearing this news, she lost her mind, her clothes fell off, and she wandered naked and crazy.

People encountering Paṭācārā treated her with disdain, throwing clods of dirt to chase her away. She eventually wandered near the place where the Buddha was teaching. People listening to the Buddha wanted to drive her away because of her nakedness, but the Buddha had compassion for her and had her brought inside the temple and clothed. Listening to the Buddha preach, she regained her sanity and achieved insight into the nature of suffering.

In the Khmer oral versions, the force of Paṭācārā's story comes across only when one sees her liberation from suffering at the feet of the Buddha against the stark backdrop of the unimaginable and unrelieved suffering she has already endured. Some oral versions, following the commentarial accounts, add details that are particularly relevant to our interest here in the opacity, phenomenologically speaking, of karma. For instance, Paṭācārā becomes pregnant two times, and each time she decides to return to her parental home to give birth. This same decision, repeated twice, is depicted as having quite different outcomes. The first time, nothing dire happens, although she does suffer the unpleasantness and indignity of giving birth while still on the road and must return to her husband's house without reaching her destination. The second time, as we have seen, her decision precipitates a series of tragedies in which the workings of natural forces only highlight human vulnerability. Moreover, as disaster after disaster befalls Paṭācārā, she is reduced to helplessness: she is in labor alone in a rainstorm as her husband dies, she stands immobile in the middle of a river as her children die, she loses her mind with the news of the death of her remaining family. Whether we understand the disasters that befall Paṭācārā as due to her karma or just to bad luck, we are left wondering what sort of prudential intention and practical reasoning she could have possibly engendered that would have allowed her to surmount the future that she inevitably faced. Indeed, one Khmer refugee's comment on the story indicates the reason that the general usefulness of karma as an explanatory device does not make karma a useful guide for defining ethical intentions:

> If we follow the woman on her journey, we are surprised and wonder how she can manage to cross the river with her two children

> unless she takes the chance of taking one at a time. This woman is an ethical being; she must always make choices (like all people). . . . This choice can be right or wrong. If the choice turns out to be good, she will receive good karma, but if the choice is wrong, she will receive bad karma. These are the concepts of Buddhist teaching in the story.
>
> If her decision had succeeded, she would have peace—but her decision turned out to be the same as before. Before she chose her husband and left her parents; the consequence was that she lost both of them. And now, both of her children were lost too, one by the eagle and one by the swift strong water. The woman could not endure all of these pressures. She became crazy. She had dukkha now . . . [h]er dukkha came from all her bad actions. In society, people laughed about her craziness. However, after she listened to the dharma, she became a good person and she got enlightenment. Who can say whether she was bad or good? The consequences of her dukkha led her to the dharma which resulted in enlightenment . . .
>
> In my opinion, if people emphasize loving kindness and think less about the law of karma, there will be a reduction of suffering because people acting out of loving kindness will create social justice in their community.[12]

The textured configuration of moral life as depicted in stories like those of Bandhula and Paṭācārā make us doubt that the configuration of ethics by such things as the limits of our knowledge about karma and its fruits can be expressed adequately in propositional form. Indeed, we suspect that the configuration of moral life, like other kinds of sub-ethics, can be learned only from narrative and life-experience itself.

4. Moral life refigured

To this point, our argument has been that Buddhist evidence suggests that moral life is inseparable from the prefiguration and configuration of ethics effected through narrative. We turn now to a third sub-ethical role of narrative in Theravādin ethics, which we will call, again using a term adopted from Ricoeur, "refiguration." Refiguration refers directly to literature's effects on self-understanding which "express their positive function of revelation and transformation of life and customs" (Ricoeur 1988, 101). Refiguration is, thus, the most obviously transformative aspect of narrative sub-ethics.

In the course of work among Khmer refugees newly arrived in the United States in the 1980s, Anne Hansen was struck by the way that the refugees used narrative in their ethical reflections about their own lives. After hearing many refugees recount their experiences of terror and deprivation during the Pol Pot regime in Cambodia, Hansen asked a number of individuals and groups to comment on their experiences, posing the question, "How could this [the deaths

of two million Khmer under the Khmer Rouge] have happened?"[13] To her surprise, the refugees she interviewed invariably responded to the question with well-known Buddhist stories. The story of Paṭācārā emerged as particularly important to many of the refugees. As we have already seen, Paṭācārā's life contains suffering, grief, madness, homelessness, and healing—experiences many refugees have shared. Nonetheless, why would they have turned to her story as a means of explaining their own? What made the story so important to these refugees?

Some narrative theorists have suggested that there is a "consoling function of narrative" (Eco 1994, 87), and therapists working with Khmer refugees have found that the ability to construct a personal narrative of experiences before, during, and after the Pol Pot regime is an important means of healing for Khmer trauma victims (Mollica 1988; Kuoch et al. 1992; Herbst 1992). While such theories and reports go some way toward helping us to understand why refugees incorporate narrative into their explanations of traumas experienced during the Khmer Rouge years, they leave unanswered why anyone would tell another person's story as part of an attempt "to find a shape, a form, in the turmoil of human experience" (Eco 1994, 87).

One possible answer, a particularly Buddhist answer, can be found in some versions of the Paṭācārā story itself. In the oral versions collected by Hansen, Paṭācārā's story ends with a general affirmation of her liberation, but commentarial versions elaborate this aspect of her life a bit further (Rhys Davids and Norman 1989, 55–59; Müller 1893, 108–17; Norman 1911, 260–70; Morris 1885, 25; Woodward 1932, 21). The Buddha realizes that a mad woman is approaching him. Through his powers of clairvoyance, he knows that she had been a female renunciant (*therī*) during the lifetime of a previous Buddha and that in his presence she had made a resolve to become the foremost in knowledge of the codes of monastic discipline (*Vinaya*); this allusion to her previous life, which was in striking contrast to her present life, emphasizes that the opacity of karma can only be penetrated by the omniscience of a Buddha. The Buddha causes Paṭācārā's mind to become clear and has her brought to him. She is ashamed because of her lack of clothing, but he has someone clothe her and he himself then preaches to her. Through this experience she is set on the path of insight and ordained as a nun in the Buddha's monastic community. She then struggles for many years to obtain higher knowledge that will free her from the suffering of her life. Finally, one day, as she washes her feet, pouring water on them three times and watching short, medium, and long rivulets of water form, she seizes on the rivulets as an object of meditation. Watching them, Paṭācārā reflects that some people die in youth, others in middle age, and still others in old age—like her sons, husband, and parents. This sudden refiguration of her experience serves as the basis for her enlightenment.

Our suggestion is that the Paṭācārā narrative itself functions for some Khmer refugees in a manner comparable to Paṭācārā's vision of the rivulets seeping into the ground. For Paṭācārā, that vision effects a personal conversion by refiguring

her experience into something distant from herself and allowing her to become detached from the story in which she herself is the main character. Something analogous happens when a refugee tells Paṭācārā's story. Her story is not simply an allegory for the teller's own life-story, now with a hopeful conclusion. Just as a prefiguration of the moral life is achieved through narrative, insofar as it allows us to overcome our distance from others as well as gain an empathetic involvement with their particularity, so a refiguration of our moral lives is achieved through narrative insofar as it enables us to cultivate a crucial distance from our own circumstances and gives us a way of seeing our lives with a degree of detachment.

Paṭācārā is probably an easy object of empathy for many Khmer refugees. Not only does she experience terrible loss, but she is the only survivor among all of her family members—a situation all too common among the refugees. Certain events were particularly emphasized by the Khmer storytellers: the loss of her children, her madness, the way in which other people treat her, and particularly her nakedness—events that mark the kind of human vulnerability too familiar to Khmer refugees. In the midst of this misery and loss, the Buddha's reaction to Paṭācārā, even to her nakedness, is notably different from that of all other people, and his compassion for her is transformative. Her narrative, in all its versions, also provides some indication that tragic events are not completely without relief. While Paṭācārā suffers unimaginable losses, her life-story also tells of healing and transcending those losses. In the end, she proves to be victorious. Her story thus brings its Khmer tellers and listeners full-circle to what Ricoeur has identified as the initial moment of ethical reflection: ethical reflection "can only begin from the belief that 'I can,' and that I am what I can do"; in this moment, the reflecting self is able "to regain possession of itself across a whole life" (Ricoeur 1978, 176). When, as in the case of the refugees, reflecting on one's own life may be too painful, a well-known narrative such as Paṭācārā's may provide a more accessible means for regaining possession of oneself.

We have only begun to explore the various roles of narrative in Theravādin ethics. We have, for example, said nothing about its role in organizing the moral diversity of the Theravādin tradition, nor have we tried to decide whether the prominence of stories in Theravādin ethical literature suggests that the Theravāda has its own tradition of casuistry—or, indeed, whether this prominence indicates that the Theravāda represents meta-ethically a kind of ethical particularism.[14] These large scale questions deserve more investigation than they have received from students of Buddhism to date. We have given our attention to only three sub-ethical dimensions of Buddhist ethics that are effected by narrative, to what we think is known in the moral lives of Buddhists even if it is not explicitly described. Perhaps most important of all, in attending to these sub-ethical recognitions and choices in Buddhist texts, we have found ourselves also learning about ourselves.

Notes

An earlier version of this essay was presented to the Buddhism Workshop at the University of Chicago in February 1995, and we benefited from the challenging response that we received. We would also like to thank Frank Reynolds and other readers for the *Journal of Religious Ethics* for the aid we received in revising this essay. Charles Hallisey also happily acknowledges the generous support he received from the Dartmouth Humanities Institute on Moral Epistemology in the course of preparing this paper.

1 We adopt the differentiation of kinds of ethical figuration from Ricoeur 1988, although admittedly our use of these terms differs slightly from Ricoeur's, we have benefited greatly from the discussion of Ricoeur's distinctions in Kemp 1995.

2 It is worth noting that the Obeyesekeres speak in the past tense about the place of narrative in Buddhist life; they are referring specifically to contemporary Sri Lanka and especially to what has been called Protestant Buddhism; although we use the past tense in this sentence, to maintain continuity with the quotations, we are also wary about generalizing from the recent history of Sri Lanka to the rest of the Theravādin world

3 As Stanley Tambiah has pointed out, a religious phenomenon often "points in two directions—toward the semantic direction of cultural presuppositions, paradigms, and conventional understandings; and toward the pragmatic and interpersonal context" in which the phenomenon is used (Tambiah 1984, 132).

4 See Inden and Nicholas 1977, 65, for a suggestive discussion of the lack of absolute separation between natural and moral orders in Bengal.

5 Apparent exceptions, of course, are the rulers of animal societies, which correlate quite closely to human rulers. It is also the case that, in some particular contexts, particular animals could be understood by an audience as referring to a particular social group; for example, in the Khmer *Gatīloka*, a text composed at the turn of this century, veiled references in a story contrasting the lives of free wild dogs and enslaved domesticated dogs were clearly meant to rebuke Khmer officials aligning themselves too closely with the French protectorate. We should remember that Theravāda Buddhists were always hearing these stories across cultural boundaries, with the Khmer people in Cambodia having a different set of allies, rivals, and enemies than the Sinhala people in Sri Lanka. This internal cultural diversity of the Theravādin world meant that no one class of people could consistently be identified with a particular animal group throughout the Theravādin world. Moreover, like humans, individual animals are a mixture of good and evil. Thus, while groups of animals may, like humans, be implacable enemies (dogs and foxes, for example), no group has an exclusive claim on good or evil.

6 See *Jātaka* 1 370–71; we owe this example to Steven Collins

7 Translations of different versions of the story can be found in Burlingame 1921, 28:170–75, and R. Obeyesekere 1991, 97–105. For discussion of another ethical dimension of this story, see Obeyesekere and Obeyesekere 1990.

8 For a translation of a Sinhala version of this tale from medieval Sri Lanka, see C. Reynolds 1970, 57–66.

9 For a descriptive account of the advocacy of sympathy as a moral value in Theravāda Buddhism, see Aronson 1980, 3–24.

10 It should be emphasized that this is not the same thing as saying that it provides a foundation for ethics in general.

11 The translation here and later in this section is by Charles Hallisey from the *Mangalatthadīpanī*, composed in northern Thailand in the sixteenth century (*Mangalatthadīpanī* I.48–50), for a translation of another version, found in the fifth-century *Dhammapada* commentary, see Burlingame 1921, 29.40–41.

12 This account was told to Anne Hansen in an interview in East Boston, Massachusetts, in May 1987 and is quoted from Hansen and Phath 1987, 24–25.
13 Much of this material was collected in collaboration with Bounthay Phath and presented in Hansen and Phath 1987. For discussion of the use of stories as a means of response to the Pol Pot period, see Mortland 1994 and Smith 1989.
14 See, for some preliminary comments, Hallisey 1996.

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BUDDHISM AND LAW

The view from Mandalay

Andrew Huxley

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Buddhism and law—a new problem

In his contribution to this volume Professor v. Hinüber elegantly demonstrates that Pali Buddhism is a legalistic enterprise. The vinaya-dhara (the monks who had been trained in vinaya expertise) wrote for and argued with each other in an idiom that most closely resembles the glossators on the *Digest* of 13th century Europe and the early jurists of 10th century Islam. They talk and think like lawyers, even if the vinaya in action lacks some of the features which we nowadays expect from a legal system. The vinaya-dhara were experts in interpreting the sangha's collective intention and possessed a monopoly on the ordination of new recruits into the sangha. Thus, if we think of the sangha anthropomorphically, they are its super-ego and its reproductive organs, while the abidhammist meditators are its heart and soul. The conclusion I draw from v. Hinüber's article is that the vinaya is nearly as central to the Buddhist religion as the shari'a is to Islam. If we were to rank religions in order of legalism, Theravada would come at the legalistic end of the scale, near to Islam and far from, for example, Taoism. But on a direct comparison, Islam appears more legalistic, more concerned with regulating the day to day activities of its adherents, than the Theravada: it is possible to be a Buddhist without adhering to the vinaya but it is impossible to be a Muslim without following the shari'a. Burma presents a challenge to these generalizations about legalism and Buddhism. In Burma this gap between Islam and Theravada has narrowed—perhaps even to the point of disappearance. In precolonial Burma the monks adhered to the vinaya while the laity adhered to its own distinctive legal literature, known to the Burmese as "dhammathat and rajathat" and to the British as "Burmese Buddhist law." My main aim in this article is to persuade you that this law for the laity is, in a deep sense, Buddhist. If I can establish that dhammathat and rajathat are related to the dhamma-vinaya of the Pali canon in much the same way as the classic texts of the shari'a (al-Shafi'i's *Risala* and al-Shaybani's *Asl*, for instance) are related to the *Qu'ran*,

then pre-colonial Burmese Buddhism and pre-19th century middle eastern Islam can be counted as equally legalistic. This conclusion would be directly opposed to Max Weber's views on Buddhism, which have become conventional wisdom, but that does not cause me undue dismay. We are all iconoclasts now. Most of my contemporaries in S. E. Asian studies seem to spend most of their time complaining that the standard textbooks have got it wrong. We are midgets standing on the shoulders of giants, but we persist in believing that by kicking the giant hard enough in the neck we can persuade it to face the other way.

My source material is the legal literature of Burma, a surprisingly large amount of which survived in manuscript form into the 20th century. The great majority of the texts were written between the 16th and the 19th centuries, but under normal conditions Burmese manuscripts perish after about 150 years. The older the text, the more copyings it has passed through: we possess three radically different manuscripts of a popular dhammathat written as late as the 1750s. About a quarter of the material has been printed, and about a tenth of it has been translated into English. The manuscripts are to be found in libraries and private collections across Burma, and also in the libraries of London, Berlin and Japan: no systematic comparison and analysis of them has yet been carried out. The two more important genres of legal literature were *rajathat* (written in the vernacular languages of Burmese, Mon, Arakanese and Tai-Shan) and *dhammathat* (written in both Pali and the vernaculars). Rajathat emanated from the palaces and ministries of the capital city: they were the less ephemeral of the commands issued by the king. It would be misleading to think of them as legislation in our modern sense, but one or two of them circulated widely and retained some authority after their author's death. Dhammathat could be written by anyone—we have biographical information on about forty dhammathat authors: monks lead the field, followed by laymen holding royal appointments, from the Prime Minister through the Clerk-in-charge-of-the-Royal-Boats down to minor officials in obscure provincial towns. The members of Burma's legal profession, the *she-ne*, also contributed, as did more than one retired general. At least twenty dhammathats were written in verse. Burma's two most famous 18th century poets composed dhammathats in the vernacular, while some of the authors who wrote in Pali verse form had country-wide reputations for their learning. The less important genres of legal literature were *pyatton* meaning jataka-type stories of clever judges and their tricks of the trade, *pyatton* in its other sense of a collection of actual law reports which were sometimes "vanity published" by the judge involved, *niti* literature made up of Indian wisdom verses in Pali which were translated into Burmese from the 18th century on, and *rajadhamma* literature which listed the duties of kings, the details of coronation ritual, the proper care of a white elephant and kindred topics. When combined with some inscriptions from 13th century Pagan and a few items of evidence from the Buddhist cities of first millennium Burma, this legal literature allows us to reconstruct Burmese legal history from the time of the first fixed irrigation systems in the last few centuries B. C. to the present day.

Legal anthropologists propose the general rule that irrigated rice growers are more legalistic than wheat or maize farmers.[1] The construction of dams and tanks creates problems of regulating access to water which tend to be solved through law rather than through kinship or caste. Evidence from all over mainland S. E. Asia confirms this hypothesis: the irrigators down in the valley, whether Khmer, Thai, Vietnamese or Burmese, have produced an elaborate legal literature while the slash and burn cultivators up in the hills have not. Leach tells us of a parallel dynamic in which the irrigators are Buddhist while the hill people are "animist" or "shamanic."[2] This coincidence suggests a link between Buddhism and legalism, but does not prove it: entirely different factors may simultaneously have pushed the rice growers towards law and towards Buddhism. However, once Buddhism had been adopted by the S. E. Asian elite and once they had chosen to adopt a S. Indian alphabet already used as a medium for Buddhist literature, the trends towards Buddhism and legalism mutually reinforced each other. Burma, which opted for Buddhism much earlier than Cambodia or Thailand, was the center of these developments. It has long been recognised that the law texts of Bangkok and Phnom Penh draw on a source written in 13th century Pagan. It now seems likely that the same is true of the law texts of Chiang Mai, Vientiane and Luang Prabang, though they may also have drawn on Tai codes composed before the Tai crossed the Mekong on their journey south. Burma not only led the way in combining Buddhism and legalism, but also pushed the process further than its S. E. Asian neighbors. By the early 19th century, just before the start of colonial encroachment, Burma was more legalistic than its Buddhist neighbors. Since this claim is certain to annoy Thai and Khmer scholars, I must carefully define what I mean by it.

Contemporary legal philosophers get very excited about the adjective "autonomous": a society is more legalistic (is nearer to the ideal of a *rechtsstaat*) the more its legal system can be described as autonomous. "Autonomy" in this usage combines two different arguments. On the one hand autonomous law has prevailed over such competing techniques for organizing society as caste, feudalism, bribery and bureaucracy. On the other hand by ceasing to be one of the contestants in society it has become the prize to be contested. "Autonomous law" is seen as the battleground on which different social groups can contest their different visions of society. The U. S. Supreme Court, for example, has the function of recasting political and ethical disagreements over racism or abortion into law suits that may be disposed of legalistically. Burma did not have the precise equivalent of the Supreme Court, nor did it have a written constitution, but in the third section of this paper I argue that Burmese law became the battleground on which the king, the sangha and the legal profession could contest their respective claims. To mention the Burmese legal profession is to introduce another sense in which Burmese legalism outstripped its Thai, Khmer and Indian neighbors: Burma was the only country in South or South East Asia to develop a legal profession independently of European influence. This is an important

measure of legalism, since a society will only invent lawyers when there are enough law jobs to be done. Though this may sound like a truism, it took the genius of Max Weber to point it out. In the pages that follow I am critical of Weber's sociology of Buddhism: his sociology of law, however, remains my constant inspiration. In Burma in the year 1800 "law" was considered essential for any society operating at a level higher than the village. It is "law" which defines the balance of power between the village and the city, "law" which regulates all important economic matters through its rules on debt and access to agricultural land and thus "law" which dictates the patterns of stratification and patron—client politics. The king was the power in the land, but to bring a matter before the king for decision entailed presenting it as a law-suit with the assistance of lay lawyers (the *she-ne*) or monk-lawyers (the *vinaya-dhara*). The pithy phrases I want to use, such as "legalistic oriental despotism" or "constitutional absolute monarchy" or "dictatorial rechtsstaat," sound paradoxical. But they embody the truth that Burma, which could not imagine any alternative to absolute monarchy, nonetheless went much further than its neighbors in solving "the problem of total power."[3]

The sources I use reflect the views of Burma's intellectual elites. It is now almost impossible to reconstruct the *mentalité* of the pre-colonial villager in the paddy field. There are hints that Burma's popular culture was equally legalistic. Judgment tales (stories of clever villagers who won fame and fortune by their skill in dispute settlement) were the second most popular theme of stories and puppet shows. These puppet shows, the carriers of popular Burmese culture, were closer to Wagner's *Ring-cycle* than to *Punch and Judy*. Each puppet show lasted for three days and was preceded by an overture telling of First Things, of how the world, humanity and civil society were created. A Royal Order survives which stipulates the contents of the overture in some detail. In the hope that it reflects the view from the village as well as that from the king, I summarize it here. "On the premier show the music begins with odes to air, fire and rain before the lady spirit medium makes her appearance." After she has sung some of the 37 Major Choruses (a number associated with the cult of the *nats* or indigenous spirits of the locality), three potted shrubs are brought on stage to represent the hedge that marks the boundaries of the universe. We see tableaux of supernatural beings—the Naga "serpent" and the Garuda "bird," followed by a pair of ogres. Next comes wild life—a frightened monkey looks down from a tree top, an elephant enters stage left, a tiger stage right, and then a horse stands up, trots, and gallops past a palace that has appeared stage right. Enter the first human puppet—he is a wizard seen mixing herbs and roots into a paste. Soon he is dancing faster and faster until he levitates out of view through a "neck hole" above the stage. In his wake he leaves civil society:

> s28 The palace, or throne, is on the right of the stage: when there are two kings in a story, another throne is placed on the left of the stage.
> s29 A hermitage, when necessary, appears near the second palace.

s30 Premier, Judge, Assistant Minister and City Officer enter the stage from left and march across it with all solemnity.
s31 Before the intermission begins, the ministers discuss with all seriousness *dhammathat*—customary law, *rajathat*—King's decisions, and *pyatton*—Law Court Decisions.
s32 Music of Exit and Drums of appearance are played and as soon as the music is over, the king appears on the throne.

(ROB 1–3–1822)[4]

Once ascetics, ministers, the legal texts and the King himself have made their appearance, the intermission begins, followed soon afterwards by the first play of the night. The point I emphasize is that in the conventions of the puppet play the serious discussion of written law is used as a synecdoche for government in general. The puppets, as well as the intellectual elite, are legalistic.

Was Burmese legalism inspired by Buddhism? Burmese intellectuals could not have conceived any alternative. The Pali Canon, along with such quasi-canonical works as the Sri Lankan chronicles, Buddhaghosa's commentaries and the *Questions of King Milinda*, offered all the science, history, epistemology and sociology that Burma had. It would have been as difficult for Burma to think of law in non-Buddhist terms as for Aquinas or Kant to think of philosophy in non-Greek terms. The early kings of Pagan took a legal decision which intensified this Buddhist influence. The Tai kings who founded the cities of Vientiane and Chiang Mai promulgated short legal codes to attract population to their new cities in an early example of what we now call "Law and Development." As a result, Laotian and Lanna law is conceived as starting with Fa Ngum and Mangrai, these city-founding kings. Legal historians, analyzing these codes from outside, may find that they draw extensively on sources older than the kings who wrote them. But from inside the cultures, the codes are perceived as *new law* for a new kingdom. The early kings of Pagan took the opposite approach. Their recognition of dhammathat as the prime source of Pagan law amounted to a promulgation of *old law* for a new kingdom. The dhammathats, though they are written by named authors, are conceived as editions of the age-old law text which is written on the walls at the boundary of the universe. Many of the dhammathats are introduced by the tale of Mahasammata and his clever judge Manu whose fallibility leads him to become a recluse, to travel to the boundary of the universe, and to bring back to the king the text of the dhammathat. A rich stew of influences has cooked up this story. The canonical account of Mahasammata in *Agganna sutta* [D III 80–98] is the most obvious ingredient: we can also taste hints of the *Arthasastra*, of early Burmese (and probably pre-Buddhist) hermits and shamen, and of the king's role as epistemological validator (what the king does not know is not worth knowing). Presenting the dhammathats as new editions of old texts enabled a ready made hermeneutic to be applied to them. Vinaya dharas had spent well over a millennium developing techniques to understand the vinaya pitaka as an old text. These techniques could be

immediately applied to the elucidation of the dhammathats. The passage from oral to written law usually poses massive problems as a culture struggles to evolve techniques for interpreting the new-fangled law texts. Just such problems had to be faced in Chiang Mai and Vientiane. But in Pagan, the vinaya dharas had already developed techniques for written law which could easily be applied to the "old law" of the dhammathats. Writers of new dhammathat editions and sub-commentaries on the vinaya shared the same tools. By the 17th century we can identify authors who worked in both genres. Here is another sense in which law for the laity in Burma is more Buddhist than in Siam, Laos or Cambodia.

In the early 18th century a fascinating work appeared which pioneered an alternative treatment of the relationship between the dhammathats and Buddhism. Shin Khemacara in his monumental *Vinicchayarasi* dhammathat attempted to demonstrate that every rule in the dhammathats could be traced to a source in the Pali canon. His theological justification was as follows:

> The law of inheritance is also mentioned in the sacred books; hence inferences may be drawn as to what the law would be according to the sacred writings by comparison with the dhammathats and vice versa. The Buddha . . . has two kinds of heritage to bestow on his children, the temporal and the spiritual. Such temporal happiness as is enjoyed by the rulers of the brahma, deva or mundane worlds . . . are obtained by them only through observance of the rules he has laid down; hence indirectly the temporal welfare of every inhabitant of the three worlds is a heritage bestowed on him by the Buddha. The spiritual heritage is the spiritual bliss, secured by the attainment of arhatship and nirvana. The Buddha spoke more in praise of the spiritual than the temporal heritage . . . Every one who is firmly established in the Buddha's teachings is entitled to become his heir and to inherit his two heritages, first the temporal by being born always a ruler in any of the three worlds, and secondly the spiritual, by the attainment of nirvana. . . . The subject of the two kinds of heritage is treated of in the *Dhammadayada sutta* of the *Sutta Pitaka*.
>
> (D1:5 [D18])[5]

Following the Buddha's temporal heritage, as elucidated in dhammathat and rajathat, is a meritorious way of life which will lead to a favorable rebirth. Following the Buddha's spiritual heritage, as elucidated in the vinaya, is for celibates only but it leads towards the greater reward. Khemacara was not always successful in his search for canonical authority:

> The 16 classes of son are seldom mentioned in the Tipitika, but it is as boundless as the ocean, and search should be made in the old writings for what is mentioned in the dhammathat.
>
> (D1:19 [D18])

And in at least one case he finds a contradiction between dhammathat and scripture:

> That wills are invalid is the rule of the dhammathats. But, according to religious teaching, children should follow the dying injunctions of their parents.
>
> (D1:71 [D18])

I suggest in later pages that Khemacara's innovations were a response to increased Burmese sophistication in bibliography and literary history. By the 18th century it was apparent from the silence of Buddhaghosa, of the *Mahavamsa* and of the texts sponsored by Parakramabahu I that Sri Lanka had never had an equivalent of the dhammathat literature. That Burma should be in possession of a key Buddhist text which was unknown to the Mahavihara required some quick thinking. Since the dhammathat cannot share in the unbroken lineage from Upali via the Mahavihara to Burma which authenticates the vinaya, Khemacara tries to ground it in the canon as a whole.

Several books have been written about Shakespeare's attitude to law, but it does not follow that Shakespeare was a legalistic author. Likewise the fact that the Burmese found legalism in the Pali Canon does not prove that Pali Buddhism is a legalistic religion. I believe that the Pali Canon contains seeds which can, under appropriate conditions, sprout into legalistic state or royal law. But only once, in Burma between the 6th and the 13th centuries, has the Pali canon been planted in appropriate conditions at the right time. To explain all the negative cases, all the instances where the seeds of Buddhist legalism fell on stony ground, would require more than one lifetime. But the outline of a shadow of a hint of a sketch of such an explanation might look like this: In India during the 5th and 4th centuries B. C. the seeds of Buddhist legalism sprouted and grew tall among Buddhist kings and traders and in big cities. The Hindu authors of *Manusmrti* and *Arthasastra* in the 1st century A. D. redefined this early Indian law in terms of Brahmanic orthodoxy, since when the Buddhist contribution to Indian law has been obscured. In Sri Lanka caste won its competition with law to fill the niche of dispute settlement and social organization. In Thai and Khmer traditions (which paid lip service to Brahmins without having many proper Brahmins) law came under the king's control from the start. In China a highly sophisticated set of ideas for and against law were in circulation long before the arrival of Buddhism. Buddhism could affect Chinese law on the margins, but could not shape the direction of Chinese debate. But why is Tibetan law not more Buddhist than it is? Why does it not borrow more from the vinaya or from the Sutta pitaka's quasi-legal lists? Publication and analysis of the Tibetan law texts lags thirty or forty years behind S. E. Asia[6] and until the basic work has been done it is unwise to speculate. But here is a very tentative suggestion. If the legal texts found at Tun Huang represent the earliest period of Tibetan legal writing, then perhaps they were written by scribes who were not particularly

Buddhist in orientation. Perhaps Tibet took its law from the north, from the jumble of cultures trading along the Silk Route, and its religion from the south, from the Buddhist monasteries of Kashmir. These broad speculations of mine will probably turn out to be wrong, but the interaction of Buddhism and Law at the most general level is such a new field that we do not yet know what kind of maps will prove appropriate. My thanks to the Numata Foundation, to the University of Chicago and to this Journal for sponsoring our expedition into *terra incognita*.

The origins of the Burmese Buddhist law texts

Fin de siècle scholarship[7] judged that S. E. Asian Buddhist law had a veneer of Buddhism tacked onto a solid core of Sanskrit sastric material. General reference works still reflect this original judgment with their descriptions of "the Buddhist-Hindu branch of the Hindu legal system,"[8] or "a law of Hindu origin modified in the direction of Buddhism"[9] or "the Burmese dhammathat, based on the Laws of Manu."[10] One of my Departmental colleagues (now retired) forecloses any discussion of Buddhism and Law "since Burma and Sri Lanka between them provide no literary evidence of a distinct Buddhist jurisprudence."[11] In this section I reevaluate these sweeping judgments in the light of a century's further research on Burma.[12]

We are interested in essential influence, which a recent conference[13] called "The Reception of Legal Systems," rather than in cosmetic influence. Intellectual and palace circles in 18th century Burma welcomed the cosmetic salesmen of India. Sixty assorted Sanskrit works on grammar, astrology, erotics and palmistry were translated in mid-century and known collectively as the *Byakarein*: some of this material (a list of 21 types of virgin, for example) entered the later dhammathats. And in the 1790s eight Indian dharmasastras including the *Manusmrti* were brought into the royal library from Ceylon, Calcutta and Benares. They encouraged King Badon to make certain comparative conclusions, but did not influence the Burmese dhammathats. At the same time, for reasons I shall discuss in the next section, 18th century dhammathat authors competed to insert yet more obscure Buddhist knowledge into their dhammathats. The hilarious lists of "40 kinds of female flirtings" were borrowed from the Jatakas and Dhammapada in the 1740s and inserted in a dhammathat text for the first time (D2:8 [D18]). All this 18th century activity is unessential—the equivalent of the contemporary European fascination with *Chinoiserie*—but to avoid its contaminating influence I must concentrate on the earliest surviving texts. There is, alas, only one well-dated early Burmese law text: King Klacwa's edict on theft, promulgated on 6th May, 1249, is preserved in several different inscriptions and is therefore about as genuine as anything can be in this imperfect world. By offering incontrovertible proof that the Kings of Pagan drew on canonical Buddhist sources when drafting their laws, it destroys Forchhammer's theory that Buddhist influence did not manifest itself until the 17th century.[14]

But it also casts doubt on modern accounts of Burma's literary history: if the edict can be labeled as a work of literature (as its contents, length and argument demand), then it predates other Burmese language documents by three centuries and suggests that literacy in the Burmese language led to literature in the Burmese language much earlier than is presently thought. This is a helpful possibility to bear in mind as I turn from legal epigraphy to legal manuscripts. The problems of dating surviving dhammathat texts will never be fully solved. Each copyist introduces interpolations, and the point at which we decide an old text has become a new text cannot be scientifically determined. We must try to forgive the inconvenience and uncertainty that such interpolations cause. As Derrett puts it in the context of India:

> Interpolation could be another word for a general process, akin to fermentation, signifying that a sastra was alive.[15]

Interpolation demonstrates that the dhammathats are being preserved as legal documents for the present, not historical documents about the past.

Based on internal evidence combined with the accounts of Burmese literary histories, I treat the following as early dhammathats.[16] We have one dhammathat, *Dhammavilasa* [D4], which epigraphy confirms as being written in 12th century Pagan.[17] We have a group of works which claim to have been written before the rise of Pagan in the 11th century, such as *Manussika* [D2], *Pyumin* [D3], *Kyannet* [D36], *Manosara* [D1], *Mon Original* [M4] and *Mon Duttabaung* [M6].[18] Some elements of these works may indeed by older than the 11th century, particularly the titles and exordiums. But in the form in which they survive, they have been subjected not only to 700 years of post-Pagan "fermentation," but to the homogenizing filter of Pagan itself. Such was the prestige of 13th century Pagan with its 2,000 stupas, temples and monasteries that it sucked in all Pali scholarship from the region, refashioned it in its own image, and spat it out again. We learn of five Tai kings producing or using law texts between 1275 and 1317, the years of the Mongol invasion and the fall of Pagan. Three of them ruled over mixed populations in areas where Pagan's writ had once run, while the other two ruled mixed populations in what is now Thailand. To the extent that our surviving *Wageru* [D5] manuscript is unaltered by "fermentation," it is one of this group: along with *The Laws of King Mangrai* it represents the spread of Buddhist law texts from Pagan to the new 14th century milieu of Thai Buddhist monarchs. In their present form these ten or so early dhammathats are written in Pali, Mon, Burmese and Arakanese. The conventional assumption that in the early 14th century they would all have been written in Pali is questionable: if King Klacwa wrote laws for his subjects in Burmese, why should the dhammathat authors not do the same?

Allowing for subsequent "fermentation," these ten early dhammathats had reached their present state by the end of the 13th century. We can think of them as standing at the beginning of five centuries of post-classical dhammathat

development, or we can think of them as standing at the end of a five century long shift from oral to written law. Let us take the latter perspective for a moment. Getting a clear judgment on the relative importance of Buddhist and Hindu inputs on Burmese written law entails getting a clear picture of how the shift from oral to written law took place. Consider this brief account from the latest western history of S. E. Asia:

> The Indian law books, especially the Code of Manu (Manava-Dharmasastra), were greatly honored in Burma, Siam, Cambodia and Java-Bali as the defining documents of the natural order, which kings were obliged to uphold. They were copied, translated and incorporated into local law codes, with stricter adherence to the original text in Burma and Siam and a stronger tendency to adapt to local needs in Java . . .[19]

This implies the "photocopier model" of acquiring written law: the credulous Burmese yokel is impressed by the Indian trader's copy of *Manusmrti*; pausing only to learn the alphabet, he pops the text in a convenient photocopier, pencils in a few alterations to reflect local custom, and triumphantly proclaims the resulting document as the law of Burma. Shifting a whole society from oral to written law does not work that way. At the very fastest the process lasts a century; normally it will take several centuries. The "photocopier model" grossly overestimates the degree to which Burma and Siam have borrowed from the *Manusmrti*. 90% of this Sanskrit text concerns matters of caste, pollution, ritual and penance that are meaningless in a society unconcerned with caste and uninterested in pollution. Where S. E. Asian Buddhists have borrowed from the remaining 10% of the text, they more often than not adapt the material to their own ends. Looking at the early Burmese dhammathats, I find only four cases where the dhammathats reproduce provisions of Sanskrit law unaltered. They are the substituted sister[20] and the dead bride-groom,[21] the rule that a king who protects his subjects receives a 6th part of all their merit[22] and the advice on how different *varnas* should take the oath in court.[23] There are five more examples where a Sanskrit legal list inspires a Burmese adaptation of it: the six evil practices of women,[24] the eight forms of marriage,[25] the six types of son who can inherit and the six who cannot,[26] the man with a wife from each *varna*[27] and the periods a deserted wife must wait for her husband.[28] Since the average early dhammathat contains about 200 such rules and lists, I can offer a very rough quantitative estimate of Sanskrit influence at between 4% and 5% of the whole. This is hardly the "stricter adherence to the original text" postulated by the "photocopier model."

I propose an alternative picture of the move to written law which I call, borrowing from a recent study of early Islamic law, the "notebook model." But, before I expound this, some deep background is required. Before the arrival of Indian scripts in Burma there were already two kinds of village society using two kinds of oral law. Most of the population supported themselves by slash and

burn agriculture, their legal needs fulfilled by the kind of custom that Savigny and Maine describe in the villages of mediaeval northern Europe. But by the 3rd century B. C., in favored places where the mountains met the dry plains, some villages had turned to irrigated rice agriculture. In legal terms this step is highly significant: it is as important as the difference between city and village in mediaeval northern Europe. Irrigation societies need more law than hunter-gatherer and slash-and-burn societies. A new range of social problems, such as organization of labor for large scale construction, differential access to irrigated land and agricultural credit (loans of seed-rice) has to be solved. Kinship relations become less important, while relations with neighbors are enhanced. I think of this first Burmese legal revolution as the change from oral custom to "oral law of the rice plains." We know of at least two cultures that underwent this shift: the Pyu of Burma's central dry zone and the Mon of Burma's southern coast. Recent archaeology has revealed that, among the Pyu at least, the first legal revolution (and the first permanent settlements large enough to deserve the description of "cities") occurred two centuries or more before they had any substantial exposure to Indian religion and Indian techniques of literacy.[29] The earliest evidence of Buddhism among the Pyu comes from the early 4th century. The earliest evidence of the adaptation of Indian scripts comes from the 5th century. "Indianization" in the wider sense lasted from then until the 10th century. The details of "Indianization" differed as between different irrigation cultures, but the general process must have been the same: local leaders of the various rice plains chose various bits of Indian culture to adapt to their own purposes. These leaders were in competition with each other, and also had to defend their rice plain against raids from hungry non-rice growers. The defensive walls which surround the center of each of the early irrigation systems tell us that this competition was anything but peaceful. At first, local leaders were attracted to one of the Indian religions, which offer new techniques for legitimizing secular power. Then, because Indian religions are based on written texts, they chose one of the Indian alphabets, and were exposed to as much Indian classical literature as they could acquire. Finally, after several centuries had elapsed, the oral "law of the rice plain" was written down, and law began to be seen as a semi-autonomous field, a written discipline which requires its own experts and practitioners. This is "Indianization" in the narrow legal sense or, if you prefer, the second Burmese legal revolution. Why did it not take place until several centuries after the introduction of Indian script and religion? Because a variant of Occam's Razor operates in legal history: actual legal systems never get more complicated than they need to be. During the 5th century A. D. patrimonial dispute settlement by the local chief was enough to get the job done. But from the 9th century onwards, land use was becoming more intensive, kingdoms were larger and literacy more widespread: the need for a more elaborate, legalistic dispute settlement was growing.

The first legal revolution requires some kind of Marxist analysis: how do changes in agricultural production bring about changes in the legal organization

of society? It is a pre-state phenomenon, which must occur at the village level: even today there are large swathes of Burma given over to slash and burn cultivation where the first legal revolution has not taken place. The second legal revolution is usually analyzed in terms of state formation and cultural diffusion: does written law increase the power of kings? Did the rice growing village pay any attention to the royal law? How did Indian religion and script spread across the Bay of Bengal? I have discussed these questions elsewhere. Let us take a different angle of approach and consider the second legal revolution not as the process by which Burmese kingdoms were formed or Indian ideas diffused, but as the process by which Burmese law was reduced to writing. Calder has just published an analysis of the early history of Islamic law describing the development of the classic Islamic legal texts.[30] Up to about 816 A. D., he says, legal discussion was purely oral. For the next fifty years the private notebook (the commonplace book or scrapbook whose contents have been accumulated over the owner's lifetime) played a crucial intermediary role. In a milieu where "a man writes down the best that he hears and memorizes the best that he writes down" it is the paragraph or segment—the single entry into a private notebook—rather than the whole text which migrates. An entry which has appealed to notebook makers in Cordoba, Qayrawan, Cairo, Baghdad and Bukhara stands more chance of survival than one that is only known to the legal enthusiasts of Cordoba. Segments of text were moved from city to city by traveling traders: it was the caravans which gave Islamic law its unity. Without these travelers the notebooks of each city would have become increasingly divergent. Even with them, local city traditions eventually solidified into the four schools of Sunni Islamic law. From about 860 A. D. some of the city archives of notebooks were edited down into through-composed full length texts—the first books of Islamic law. The transition to written law was complete when the text of these books became fixed and a consensus on legal methodology had been achieved. Thereafter legal composition took the form of commentary writing on the early books.

How much of Calder's analysis might apply to Buddhist S. E. Asia? For the period between 700 and 1300 A. D. we can, I think, treat the cities between Nakhon Si Thammarat in the Malay peninsula and Mrohaung on the borders of Bangladesh as forming a culture area comparable with the Arab Empire. There was no Caliph in S. E. Asia to impose political unity, but manuscripts could be carried from city to city by Buddhist monks, maritime traders and wandering Brahman ascetics. There are, however, significant differences. The Islamic transition was done extremely quickly, achieving a written canon in Arabic within a century whereas the S. E. Asian transition took four or five centuries before any legal texts were produced, and never reached a closure of the early legal canon: Burma kept on producing new dhammathats until late in the 19th century. The Arabs developed their own script and successfully fought off coca colaization by the older Mediterranean cultures. Reducing their oral custom to writing was part of the wholesale reinvention of "Arab oral culture" as "Islamic written culture." The 9th century Arabs needed to do this through public debate in order to build

a consensus of the faithful behind the written law. It was at this stage, and through this assertion of cultural independence, this popular enthusiasm for written law, that Islam became a "legalistic religion." The inhabitants of Burma, who bought the whole Indian take-away from soup to nuts, from script to religion, missed this legitimizing stage. Despite these differences, the "notebook model" explains a great deal about the development of written law in S. E. Asia. It explains the plurality of the dhammathat genre—the puzzling fact that no single dhammathat text claims to be the oldest or the most authoritative. And it explains the wide diffusion of Indian material: segments of text have been moved around through transmission of notebook material and by passing into oral wisdom as legal maxims and proverbs. Hence a paragraph originating in the *Manusmrti* or the *Samantapasadika* can find its way into the law text of a community that was unfamiliar with either book.

The earliest written law texts would have been individual notebooks compiled by bureaucrats who wanted to sound impressive when judging, by monks who needed notes on the legal status of donated property in case the king should try to confiscate it and by local regional patrons who would have to lend money's worth to their clients and settle any local disputes over debts and manpower. The source of the Sanskrit verses they translated into Pali or the vernacular may have been the *Manusmrti* itself, as brought from India by Pasupata ascetics,[31] but was more likely to have been the *Subhasita* anthologies of epigrams, aphorisms and maxims. These Sanskrit anthologies, usually attributed to Canakya or Brhaspati, contain large quantities of material from *Manusmrti*, Kautilya's *Arthasastra* and other legal texts. Most, though not all, of the Sanskrit sources of the dhammathats can be found in one or another of these anthologies. If such Sanskrit anthologies were translated into Pali and if quotations from the Pali scriptures were added to the mix, we would get something very like a 9th century Burmese notebook. But we would also get something very like the existing Burmese *niti* literature, the three surviving Pali collections which are unknown in India but have influenced the rest of Buddhist S. E. Asia.[32] I would not go quite so far as to claim that the Burmese *niti* are examples of the notebook stage of dhammathat development. A more reasonable claim is that the notebooks of the 9th and 10th centuries were the ancestors of both niti and dhammathat texts. They used a common core of material to different ends.[33] The dhammathats are aimed at an adult readership with practical problems to solve, while the niti are aimed at the schoolboy in need of short pieces of Pali verse to construe and an education in civics. Estimates of when Burma produced the Pali niti vary from the 5th to the 15th century.[34] My guess is that the notebooks crystallized into fixed texts of niti and dhammathat in the 13th and 14th centuries.

I have made the quantitative estimate that Hindu influence on the early dhammathats amounts to 4% of the whole. I must now meet the qualitative argument used by the *fin de siècle* scholars. Even if Sanskrit learning only influenced a small amount of the text, they said, it was significant because it touched on

matters of legitimacy and internal organization. The dhammathats were legitimized by appealing to the name of Manu (resonant in Hindu mythology but unknown to canonical Buddhism) and were internally organized in terms of the sastric 18 heads of law. This is a case worth answering, even if some of the 19th century diffusionists pushed the argument beyond parody:

> Turning from the Ganges to the Nile, it will be found that the description given by Diodorus of the Egyptian Mnues answers exactly to the account given in Burmese mythology of the ascetic Manu . . .[35]

I have summarized the Burmese version of the Manu story in section one above. The Burmese have taken a Hindu hero and grafted him into a Buddhist myth. Is the result Hindu or Buddhist? Does the original homeland of a mythic hero retain intellectual property rights in foreign spin-offs? The Islamic cultures of S.E. Asia tell epics about Alexander the Great. The Tantric cultures of Tibet have "Caesar of Rome" as hero of their national epic. Children all over the world right now are buying merchandise associated with Aladdin. I prefer to think of these as examples of local tale-telling (from Sumatra, Kham and Hollywood respectively) on borrowed themes. By analogy, the Manu of the dhammathats is a Burmese Buddhist story on a borrowed Indian theme.

As to the internal organization of the dhammathats and the influence of *Manusmrti*'s 18 heads of *vyavahara* litigation, Shwe Baw has made a detailed examination of the topic.[36] He finds that only two of the Burmese dhammathats make any serious attempt to use the 18 heads as an organizing principle. *Dhammavilasa* [D4] uses the heads as chapter headings: its order of topics is quite close to *Manusmrti*, but it uses only 15 heads. *Wageru* [D5] uses 17 heads as chapter headings, but they differ quite substantially from the Indian list. About half of the earlier dhammathats mention the 18 heads, and some of them even enumerate them, but these works are organized on a different principle which I call the "list of lists." In the middle and later period dhammathats it is the "list of lists" which governs what little organization they exhibit. This approach derives from, and can be illustrated by, the Pali canon:

> Thus the Buddha spoke: "Young man, inasmuch as the holy disciple has forsaken the 4 polluting actions, inasmuch as he is uninfluenced by 4 evil states to commit sin, inasmuch as he eschews the 6 means of dissipating wealth, therefore freed from 14 evils and guarding the 6 quarters, he walks victorious over both worlds."
>
> [D III 190]

As Pope puts it: "I lisped in numbers, for the numbers came." Reading on, we would find that each of the "6 means of dissipating wealth" has its own list of 6 attendant evils and each of the "4 young men who seem to be friends" invoked on the next page turn out to be false friends in 4 separate ways. This 6 × 6 and

4 × 4 structure has an obvious mnemonic purpose. An even older example of the "list of lists" approach can be found in the *Patimokkha*, the bi-monthly public recital of the 227 rules of monastic discipline. At the end of the recital the monk states:

> Venerable sirs, I have recited the introduction, 4 cases of defeat, 13 cases entailing a meeting of the sangha, 2 indeterminate cases, 30 cases entailing expulsion, 92 cases entailing expiation, 4 cases that must be confessed, 75 rules of conduct, 7 ways of settling litigation.

Here the number 227 is what computer programmers would call a "checksum": if a novice has remembered the list of lists correctly, the totals of the constituent lists (as ticked off on rosary beads during the recitation, perhaps) will total 227. The Burmese and Mon dhammathats borrow this approach, but usually place the list of lists at the start of the text where it functions as a list of contents. *Mon Original* [M4] contrasts the Indian with the Burmese mode of organization in terms of roots (*mula*) and branches, a metaphor that is itself borrowed from the Vinaya:

> There are 18 origins or roots of law, 32 branches of law and 39 digests of law. There are 3 kinds of bribery, 4 agati, 3 kinds of giving, 4 kinds of wives, 7 kinds of slaves, 7 kinds of minor cases, 4 kinds of questioning cases, 1 kind of fair case.
>
> [M4, s.6, 88]

Again, the number 32 is a checksum for the list that follows, though something has gone wrong with the copyist's (or my) arithmetic.[37] By the 18th century, Burmese authors had created all kinds of numerological variants on this approach. *Manuyin* [D17] talks of "18 roots, 30 major branches and 174 minor branches," which allows for yet more lists to be added to the traditional core. Note the sophisticated "checksum of checksums" concealed within this statement: 18 + 30 + 174 = 222, an easily memorable number. The Siamese and Khmer law texts talk of ten root matters (or books of law copied from the wall at the end of the universe) which contain "the 29 heads of dispute which antiquity has handed down in the Holy dhammathat." The number 18 and its place value cognates 108, 180, 1080 etc. are auspicious in India. There are 18 puranas, 18 chapters of the *Mahabharata* and the *Bhagavad gita* and 18 traditional areas of knowledge. In S. E. Asia 18 has no such intrinsic significance. Having initially borrowed the doctrine of "18 heads of litigation," the S. E. Asian law texts soon discarded it. They organized their legal material on a different basis, but there is evidence that in later centuries they thought the number of heads of litigation ("branches of law") lay between 29 and 32.

Thus far I have been arguing that Hindu influence on the early dhammathats is less than is usually credited. I now turn to the proposition that Buddhist

influence on the early dhammathats is greater than is usually credited. My quarrel is not with Forchhammer, who has made some very perceptive comments on this question,[38] but with Lingat, who has reduced Forchhammer's wisdom to the level of vulgar generalization. Robert Lingat was an expert on the Thai dhammathats who made himself into an expert on the Hindu dharmasastric literature. In some circles he is hailed as one of this century's leading comparative legal historians,[39] but he had no claim to expertise about the Burmese dhammathats. Consider this:

> No provision in *Wageru* is founded upon a Buddha dictum or claims authority from the Buddhist dharma . . .[40]

Let us charitably assume that the opening and closing portions of the text (which contain the Adoration of the Three Jewels, the Mahasammata story and the authors' wish to promote the interests of religion and achieve favorable rebirths) are not "provisions" in Lingat's sense. Perhaps we can discount s.5 (oath-taking in front of a Buddha image which possesses great supernatural powers), s.65 (monks giving instruction in the Tipitika are treated favorably compared with other educators) and s.156 (monks and Brahmans are immune to a charge of murder): perhaps these are too worldly. But surely s.170 claims its authority from the Buddha-dhamma? It tells the king how to decide which of two lay patrons made a particular religious donation and therefore deserves its merit. Though this in effect concerns a declaratory judgment, since the king as judge cannot physically transfer an amount of merit from one party to the other, there is every sign that this was a real legal provision, in the sense that such disputes did actually come under the king's jurisdiction. Sub-section I gives off the whiff of authenticity:

> If both parties founded the endowment at the same time, and if they be the king and his ministers, the king's claim shall get the preference, as he is the lord in the land.

Most fatal to Lingat's over generalization are those sections of *Wageru* taken straight from the Pali canon: "the 5 special duties owed between spouses,"[41] "the 7 kinds of wives,"[42] and the 4 *agatis* or wrong ways of judgment[43] are all "founded upon Buddhist dicta." A great deal more of such Buddhist material appears in other early dhammathats, for example "the 4 kinds of marriage" (depending on whether husband or wife is closer to an angel or beast).[44] the rule that whoever looks after you in your final illness can succeed to your goods[45] and "the 10 kinds of family protection which a young woman may have."[46]

How did this legal material get into the Buddhist canon? Some of it, though it may be presented in the Dhammapada as verses spoken by the Buddha, or in the Jataka as a sermon preached by the Buddha in an earlier incarnation, is presumably not specifically Buddha–dhamma so much as general Indian wisdom

current at the time. But a large body of legal material—that which occurs in the Vinaya and the Vinaya commentaries—is uniquely Buddhist, in that it reflects the idle speculations of the early sangha. The boredom and tension of army life combine to produce "the barrack-room lawyer," the regular soldier who develops an expertise in legal tricks and dodges. The sangha, another all-male institution under rigid discipline, apparently produced the same breed of logic choppers and artful dodgers. They are caricatured in the Vinaya as the *Chabbagiyyas*, "the Group of Six Monks," whose mission is to boldly roam North India breaking the rules in new ways or offering new excuses for old offenses. The monastic milieu threw up imaginative new defenses whose strength was discussed and assessed. Some of these monastic legalisms coalesced early enough to enter the Vinaya pitaka as the stories which follow the Old Commentary in the *Suttavibhanga*. Others just missed the cut and must be sought in Buddhaghosa's *Samantapasadika* or in Jayaraksita's hybrid Sanskrit commentary of the Mahasanghika school. That these two 5th century A. D. sources contain identical monastic legalisms, though they come from opposite ends of S. Asia and from brands of Buddhism that had separated centuries earlier, indicates how early the non-canonical material is. It must date from the reign of King Asoka or his immediate successors. Would there be any similarity between the barrack room lawyering of monks and the law administered in the king's courts? The sangha included people who were well informed about Mauryan legal practice:

> Now at that time a certain former minister of justice who had gone forth among the monks was sitting near the lord. And the lord spoke thus to the monk: "For theft of what amount does King Bimbisara of Magadha impose floggings, imprisonment or banishment?" "For a *pada*'s worth, lord."
>
> [V III 44]

It is ironical that the scriptures of "unworldly" "non-legalistic" Buddhism might be our only source describing Indian law in the last centuries B. C.!

S. E. Asia treated these monastic legalisms as texts on which to elaborate sermons, as themes on which to play variations and as *topoi* in Aristotle's sense of "bases from which one argues." While the Hindu borrowings merge into the textual background, some of these Buddhist borrowings are elaborated into prominence. Take the 4 *agati* (the 4 courses not to be taken) which are the Buddha's equivalent of the two western rules of natural justice. All attempts to portray Buddhist legal procedure as fair must elaborate this text. The early Burmese dhammathats were content merely to mention the list, but 17th and 18th century works incorporate the agati into longer lists of bad judicial behavior.[47] Lanna legal literature expands the list to five and tells a rather charming judgment tale "the Rishi and the Tiger" in which different animals give practical examples of each of the possible wrong judgments.[48] Siamese and Khmer dhammathats elaborate the theme into "the Words of Indra," a beautiful and moving

sermon. The cure for bribery, anger and fear of high rank is "to judge in conformity with dhammathat and rajathat." The cure for ignorance is to consult the wise men, the monks and the former judges who know the law and traditions, and to study dhammathat, rajathat and niti.[49] Or take, as a prime example of monastic legalism, what the Burmese called "the 4 *padesa*," a check-list for analysis of the price of a thing which Forchhammer describes as in general use in Burmese commerce.[50] This has been adapted from a long discussion in *Samantapasadika* of an ancient but non-canonical verse listing 5 padesa.[51] These tells the Vinaya master how to value the item stolen to see whether the theft has triggered the highest penalty. Buddhaghosa's discussion of the concept of market-value is probably of more interest to economists than lawyers, but the S.E. Asian legal authors loved it. The Lanna authors keep the number 5 (which Samantapasadika almost reduces to 4) but at the cost of clarity and sense.[52] The Burmese authors whittled the padesa down to 4, but then elaborated innumerable sub-divisions of time, place, price and thing.[53] From a couple of pages away in *Samanta pasadika* comes the analysis of "25 kinds of theft" which is introduced as part of the ancient teachings:

> The ancient Teachers say: This matter of the second Parajika [the law against theft] is very difficult to understand. Therefore one cannot but have tortuous and fragmentary explanations. Therefore I must now say these 25 expressions which you must carefully examine.[54]

The text proceeds to shoe-horn a great deal of monastic legalism on theft into a 5 × 5 matrix. An early Mon dhammathat mentions the 25 kinds of theft as do some later Burmese law texts, and *Manugye* [D12] manfully struggles to make sense of all of *Samantapasadika*'s Pali classifications,[55] but it is the Lanna law texts which really develop this theme. "Twenty Five Kinds of Theft" becomes one of the standard titles for a legal compendium. Sommai Premchit's catalogue lists 19 surviving manuscripts bearing this title, though he adds "They should present the standard group of 25 types of theft, with stories illustrating the different penalties for monk and for layman who commit the same offense. This sampling of the topic gives, altogether, 16 topics."[56]

The strongest proof of Buddhist influence on the law texts is almost too obvious to mention. The only two legal literatures in the world which illustrate norms in terms of stories, parables and judgment tales are the Vinaya and the law texts of Buddhist S. E. Asia. In particular neither the Hindu sastric material nor the Chinese codes nor the laws of Java and Malacca share this peculiarity. You need only dip into S. E. Asian Buddhist law texts for a page or two before encountering those tell tale words: "There was once a certain king in Benares . . ." Buddhism is half way to solving a problem that has baffled every other literate culture—how to make law books interesting.

If I have spent too long making the simple point that Hindu influence on the dhammathats has been overrated and Buddhist influence underrated, this is due

to exasperation. The same point has been argued by Burmese and Indian scholars[57] for over forty years, but the myth of Hindu origins will not lie down and die. It is worth pondering why the misjudgment has become so firmly entrenched. The discovery that "dhammathat and rajathat" contains some provisions of Hindu law was publicized during the first decades of British colonialism in Burma. It coincided with and mutually reinforced the "discovery" that Buddhism was an anti-social religion uninterested in the events of this world. Both discoveries were convenient for the colonists: I would enjoy demonstrating that both were entailed by the imperatives of imperialism, but things were not quite that simple: it was King Badon (1781–1819) the last of the real old Burmese kings, who first expounded the Hindu origin of the dhammathats in writing, and the three scholars most responsible for spreading the idea world-wide were French, Swiss and Japanese. Furthermore, as a very first approximation to the truth, both discoveries have merit: the dhammathats do contain patent Hindu borrowings, and Buddhism does indeed urge a withdrawal from the worldly pursuit of wealth and sex. The pioneer legal historians qualified these original discoveries with passages that vehemently argue for the opposite,[58] but naturally such subtleties escaped the vulgar. Max Weber happened to be the most effective vulgariser of both ideas, and it is thanks to his influence that they continue to prop each other up to this day.

The political aspects of law: Why obey it? Who controls it?

In the last section I used literary history to demonstrate that the early Burmese legal literature draws more on Buddhist than on Hindu sources. In this section I turn to political history: what role did Buddhism play in the operation of the Burmese legal system? I shall tackle two inter-linked questions, the first of which is the Weberian topic of legitimacy. What reasons were advanced to persuade the ordinary citizen, the man in the paddy field, to obey dhammathat and rajathat? My starting position is that, though the rhetoric employed by kings and monks often overlapped, we can distinguish two characteristic arguments. Kings would tend to say "Obey law because I say so" while monks would tend to say "Obey law because it is Buddhist." This distinction yields quite a useful bird's-eye-view of the last eight centuries of S. E. Asian legal history. In Siam and Cambodia the royal view prevailed, and legislation by the king became the normal legal genre, while in Lanna and Laos the monks got the better of the argument, and the sangha won effective control of written law. But in Burma the emergence of a third competitor made the plot more complex. Sometime between the 12th and the 16th century the legal profession established itself, equipped with its own slogan summarizing legal legitimacy: "Obey law because it is Burmese." The three cornered rivalry between king, sangha and lawyers gives the legal history of the 17th and 18th century a particular interest. But this did not just concern the legitimacy of law: theories of legitimation complement

each other rather than rivaling each other, since the man in the paddy field is quite capable of obeying law for mutually incompatible reasons. The real point at issue in the elite world of monks, lawyers and courtiers was constitutional, or, in Hart's language, concerned with secondary rules of recognition and change.[59] Who was in charge of the legal literature? Who could authenticate a particular text as being authoritative on Burmese law? If the king ultimately exercises this power, he will be able to legislate, to engage in social engineering, by authenticating only the texts which decide as he wants. If the monks have final say, then Burmese law texts will be viewed as sacred and inerrant: the characteristics of such strongly religious laws as the Jewish Torah and the Muslim Shari'ah. If the lawyers can control which books are authoritative, then they have become the ultimate arbiters of power within a constitutional rule of law state.

Identifying such issues as matters of constitutional law is currently unfashionable. The usual approach is to mutter darkly about oriental despots while enumerating the Sanskrit and Pali themes which S. E. Asian monarchs used to justify their absolute power. I agree that, when center-stage in the theater-state, the king milked such themes for all they were worth: he emphasized his membership of the solar dynasty, his eleven kinds of royal umbrella, and his ownership of the seven treasures of the cakkavatti monarch. But when addressing a legal audience the king could sound reasonable and restrained, the very model of a constitutional oriental despot. Kaingza's *Maharajathat* states King Thalun's claims to legal preeminence in about 1640. The king has asked Kaingza to comment on the popular maxim "that rajathat overrides dhammathat, and mutual consent overrides rajathat":

> I, Manuraja, submit the following answer based on learned works and authoritative precedents: Irrespective of what the dhammathats provide, what the king ordains is law and must be followed in disputes relating to property, life and injury to the human body. In these three matters what the king commands must prevail . . . Thus the rajathat should be followed if they conflict with dhammathat or other learned works.
>
> [D8 Xth Question, s. 18]

This is a modest enough claim, is it not? The king claims the constitutional power to legislate in three areas: "property," which primarily means agricultural land but widens out to include the economy in general, "life," meaning his ultimate power of capital punishment as a synecdoche for punishment and criminal law, and "injury to the human body" referring to the King's Peace, his duty to put down robbers and dacoits. Why is this document not regarded as the Burmese *Magna Carta* or *Bill of Rights*? Mainly because these constitutional settlements ended a genuine political rivalry which never existed in Burma as long as the monarchy was unchallenged by any institutional competitor for power. The Peacock Throne remained the sole locus of Burmese power right up until the British consigned it to a museum. But also because it reflects a truth

about the Burmese attitude to written law. Burma did not have a constitution (in the sense that contestants for power argue about the precise interpretation of clause 4 or amendment 5) because written law was seen not as something to be enforced to the last letter, but as instructions giving a general indication of policy and direction. As the king himself put it:

> All officers in charge must learn from experience because custom is different from practice, practice different from the shape of things that would be brought about, the shape is different from the idea and the idea is different from the consequences.
>
> [ROB 24–9–1598]

Between the 9th and the 12th centuries, when the move from oral to written law was underway, written law created its own legitimacy. A written text derives authority from the novel characteristics inherent in writing. It has a permanence which human experts in oral law cannot hope to achieve. As an inhuman source of law, it can claim to rise above the various forms of bias and selective statement of which human law experts can be accused. If literacy is confined to a governing elite, then it will also get some authority from this connection. More powerful than any of these, however, is the association of writing with Buddhism. The Burmese superstition that one should avoid stepping across anything written on the ground survived into the late 19th century. It was explained by saying that "Each letter is the image of a Buddha."[60] The earliest dhammathats display a delight in the technology of weaving letters into words, sentences, paragraphs and books:

> Listen, all good men, to the Dhammathat kyan which I am now making in letters, even like a garland made out of flowers.
>
> [D1, exordium]

and a touching faith in the certainty that writing brings into a dubious and disordered world:

> Recording a debt in writing is like inscribing it on a rock on the face of the earth. It is never effaced and it is against nature that such debt be forgotten.
>
> [D1, 121][61]

When did this novelty wear off, so that written law needed some form of legitimation over and above the fact that it was in writing? When writing was sufficient legitimation, texts could be written anonymously. Conversely, when we find a law text identified by the name of its author, this suggests that the author's name has been remembered because it is necessary to legitimate his text. The earliest surviving dhammathat to bear the name of a credible human author is

the eponymous *Dhammavilasa* [D4], written between 1174 and 1211 by a famous monk. In the preceding section I described how Pagan sucked in literature from the surrounding older literate cities. For law notebooks, I guess that those entering Pagan from Monland were identified as "Mano" texts while those coming from Pyu and north Burman cities and from Arakan were identified as "Manu."[62] King Narapatisithu commissioned[63] one of his most trusted monks to produce an official dhammathat combining the best of these earlier texts. The monk's name is Dhammavilasa, the official nature of his work is signified by calling it *shwe myin* (golden) and its incorporation of both streams of pre-Pagan text is signified by identifying it as "Manu-Mano." Hence the earliest surviving manuscript of the work is entitled *Manu Mano Dhammavilasa shwe myin dhammathat*.[64] Presumably the learned monk, who was also commissioned by the king to purify religion in Monland, wrote the work in Pali, but the palace translators must have set to work immediately. *Dhammavilasa* texts survive in the Burmese [D4], Arakanese [D35] and Mon [M3] languages: was there once a Pyu, or even a Chin or Tai-Shan, version? I am suggesting that this important work replaced the fading effectiveness of legitimation through writing alone by an appeal to the joint prestige of the king and his most famous monk.[65] Contrary to Hla Aung, who says that "The idea of a Burmese king enacting a dhammathat was unthinkable."[66] I would call *Dhammavilasa* a royally sponsored dhammathat. The interesting question is whether the author was persuaded by his royal patron to endorse any of the more controversial royal claims to power and influence. Would an official dhammathat differ in content from an unofficial one? Consider this passage:

> This earth has an area of 2,400,000 yojanas. But any deviation from rightful ownership, even by a hairsbreadth, is wicked. Therefore kings take possession of all the lands in the kingdom and distribute them among their people in fair shares, thus obviating strife and discord.
>
> [D4 VIII 10]

This aspect of royal power is referred to by later Burmese lawyers as the "Lordship of Land and Water." Its precise implications remained a matter of controversy until the end of the Burmese monarchy,[67] when it was superseded by the even more feudal notion of the British Crown's eminent domain. Dhammavilasa's statement is the culmination of the long, tentative process of state formation from the start of irrigation to the imperial conquests of Pagan. Whenever a local big man extended the area of his political control, whenever a channel was dug to link two separate village irrigation systems, the act was justified by some such claim as "I deserve more power over land because I am better than you." The introduction of Indian ideologies of kingship allowed this to be put in more interesting ways but, as long as the claim was made orally, it remained a slogan rather than a legal doctrine. Oral rules on land use can get quite complex, but lack enough detail to make an intellectually coherent legal package. An official

dhammathat, legitimated by the prestige of the king and his most meritorious monk, is motivated to tackle these issues and to convert the king's windy rhetoric into more precisely calibrated written claims.

In its heyday Pagan sucked the early law texts in from surrounding cities. At its collapse Pagan blew its blended law texts out to its successor kingdoms and their neighbors. Between 1275 and 1317 we hear of five Thai kings who sponsor or use written law texts. To Thai kings such as these ruling over ethnically mixed populations, an official dhammathat seems to have been a necessity. Between the 14th and the 17th centuries it was these Thai kings who made all the running in S. E. Asian legal history: Mangrai's dynasty in Chiangmai produced the profusion of Lanna legal literature that has been rediscovered in the last twenty years while the Ayuthayan kings wrote much of the legislation preserved in the Three Seals Code. In Burma nothing much happened until the 16th century, when a father and son team from the obscure central Burmese city of Toungoo took it in their heads to conquer the known world. They conquered Martaban in 1541, Pagan in 1545, southern Arakan in 1546, Ava in 1555, Lanna in 1556, Ayuthaya in 1563 and Luang Prabang in 1564. Laos and Siam did not remain under Burmese control for long, but the campaigns had the effect of bringing national legal literatures back in touch with each other. The wars were fought for manpower and booty, and manuscripts, particularly those from the royal libraries of conquered kings, were fair booty. Certainly the Burmese acquired copies of Mon and Lanna legal literature during these campaigns: I guess that they also acquired law texts from Laos and Siam. But how were such texts to be regarded? Was the law they contained to be defined in ethnic terms as Thai law (and therefore inapplicable in Burma) or in Buddhist terms as universal law (and therefore to be cited in the Burmese courts)? The lawyers favored the latter approach, the king favored the former approach, and the sangha eventually adopted their own definition of legal orthodoxy. The resulting claims and counterclaims set off an explosion of dhammathat activity.

The earliest well-dated references to a legal profession appear in rajathats of 1597 and 1607. These Royal Orders regulate an existing profession, so the lawyers must have established themselves by 1500 at the latest. Where lawyers flourish, legal texts proliferate. A trainee lawyer has to acquire his own library by copying out his guru's collection of dhammathats. The more such quotable texts, the better. If written authority can be found for alternate and mutually contradictory rules, then clients whose case was hopeless acquire a text on which they can rely. They must have welcomed the "foreign" legal literature with open arms: they were plainly within the Theravada orthodoxy and plainly textually related to the dhammathats in use in Toungoo (thanks to the common origin in Pagan). Yet they added to the lawyers' storehouse of paths of justification with written rules hitherto unknown in Burma. The attitude of the legal profession between 1550 and 1620 can be summed up like this: We are going to use this interesting new material by quoting it in our courtroom arguments, and by incorporating it into our own personal dhammathats. Our normal legal practice

involves treating dhammathat and rajathat as normative, and it is we, the legal professionals, who judge what shall count as dhammathat and rajathat. The royal response to this alarming call for legal autonomy was to reimpose some kind of unity on the vast variety of law texts that had flooded into Burma since 1541. The king claimed that this was his duty by analogy with his duty to impose unity on the monks when their disciplinary disputes lead to excessive fragmentation ("purification of the sangha"), his duty to present a unified account of history ("re-editing of the chronicles") and his duty to repair the ravages which time had wrought on the very words of the Buddha-dhamma ("purification of the Tipitika"). Between 1629 and 1648 King Thalun presented the world with both a purified dhammathat and an instant commentary on it. He could, and did, ensure that the new work got a wide circulation during his lifetime. But he had no control over future kings and future generations of lawyers. If his dhammathat is to succeed in replacing its rivals, it must do so on its own merits. In the early 18th century the sangha entered the competition by writing a dhammathat that puts the word "Buddhist" back into the expression "Burmese Buddhist law." The *Vinnichayarasi* [D18] is scholarly, pious and positively dripping with the latest in classical Pali scholarship. By reasserting the claim that the dhammathats are legitimated in terms of religion, it set a standard that had to be met by both 18th century lawyers and kings. But the sangha's dignified contribution degenerated into farce: the monastic community split between those who wore their robe across both shoulders, and those who left a shoulder bare. The resulting battle was fought partly over the production and control of law texts. As a result members of the sangha competed to produce the most obscure, archaic and practically useless dhammathat text.

Let us return to the late 16th century. We can identify certain dhammathats of the period, such as *Kungya* [D6], *Dhammathatkyaw* [D10] and *Kozaungkyok* as being produced by the Burmese lawyers. These works combine a fondness for legal technicalities with a concern for practicalities. Let me illustrate this with *Kungya*, which eschews any attempt at classical learning, giving us only one judgment tale derived from the Jataka and none of the lists of sons, wives, degrees of marriage etc., which clutter up the other dhammathats. The rules are stated so as to be of maximum use in settling village disputes. *Kungya* tells us that a girl who has slept with several men can chose which of them to marry, and can demand 30 ticals of silver in the event of a refusal. I assume, with the greatest respect to all concerned, that this would be more useful at village level than the learned discussion of the five types of virgin offered by the other dhammathats. *Kungya* gives us one rule (otherwise found only in a late 18th century work) which also seems typical of village life, rather than palace decorum:

> If a woman has illicit intercourse with the husband of another woman, the latter has the right to pull the ears or the top-knot of the former. If such treatment results in the loss of an ear or of the top-knot, the loser is entitled to claim the man as her husband; and if he refuses to take her

> to wife, he shall pay 60 ticals of silver as compensation. But if no such loss is sustained, he shall pay her 30 viss of copper. The above is the rule laid down in the dhammathats.
>
> [D:2.413]

The author, Min Pyanchi, boasts that the varied sources on which his work is based include "pyattons, pyatpons, rajathats, and the *Kyemin, Zalimin* and *Manussapeta* dhammathats" [D:1.5]. U Gaung's Digest paraphrases *Kungya*'s preface:

> It was written in 4 volumes . . . having for its basis an old dhammathat which contained more rules than the Manu, Mano, Dhammavilasa and Manussika dhammathats, and which was written as far back as 11 B.E. / 659 A.D. The old dhammathat was in the possession of Sadaw Mahasangharajadhamma, who resided at Pagan in the gilt monastery built by Mohnyin Mintaya, who ascended the throne of Ava in 788 B.E. / 1426 A.D.

This story of the rediscovery of an old dhammathat text kept in a Pagan monastic book chest is partially confirmed by epigraphy. An inscription of 1442 written by the Governor of Taungdwin to enumerate his pious donations confirms that a dhammathat text was held in a Pagan monastic book chest. Alas, the Governor of Taungdwin, though a nephew of Mohnyin Mintaya and married to one of Mohnyin Mintaya's daughters, founded a separate monastery from that donated by Mohnyin Mintaya himself. But I hope that I am not being over-romantic when I suggest that the 1442 Pali dhammathat moved a few miles from one Pagan monastery to another, to form the basis of *Kungya*. When I speculate that this anonymous work was the first of the sources listed above by Min Pyanchi, in other words that it was called the *Kyemin* dhammathat, I probably am going too far into the fictional. But whatever sources *Kungya* drew on, they included the conversation and libraries of lawyers. When a married man becomes a monk and his wife remarries, the new husband must give way if the original husband leaves the sangha and returns to his wife. In the event of litigation, the new husband must pay the costs, but not any compensation for adultery [D:2.411]. This section reads as if it could have been extracted from a pyatton, a report of a real life case, since discussion of costs is common in pyattons but very rare in dhammathats. Other sections show a fondness for distinctions depending on lawyer's abstractions. The claim to compensation for adultery, for example, is lost with the wife's death "since a claim for compensation is not a debt" [D:2.454]. Either Min Pyanchi moved among professional lawyers, or his reference to "the authority of the pyattons, pyatpons and yazathats" must be understood as meaning that he had access to a Law Library.

King Thalun's attempt to purify the dhammathats in the 1630's led to the writing of two of Burma's most important law books, *Manosara Shwe Myin*

[D7] and *Maharajathat* [D8]. The first named work is a Pali language dhammathat, closely based on an earlier surviving work called *Manosara* [D1]. D7 was the joint work of Thalun's favorite monk, the Taungpila sayadaw, and Thalun's favorite lawyer, Kaingza, demonstrating how far things had changed since *Dhammavilasa* was composed at the end of the 12th century. It is no longer enough for the king to collaborate with a prestigious monk on a dhammathat: he must bring in a representative of the legal profession as well. Furthermore, the concept of "royal favorite" was by the 17th century becoming more bureaucratic. The Taungpila sayadaw held a distinct office, usually translated as "Royal Preceptor" or "Head of the Order." The term most often used in the 18th century was *maha dhamma raja guru*, which I shall abbreviate to "MDRG." Thalun may have intended to set up Kaingza as the legal equivalent: when he honored Kaingza with the title *Manuraja* he may have meant him to act as royal ambassador to the lawyers, as the MDRG was royal ambassador to the sangha. *Maharajathat* [D8] appeared under Kaingza's name alone, but the introduction is almost embarassingly fervent in its invocation of the MDRG's authority:

> I answered the questions relying on the guidance of the Taungpila sayadaw . . . He is like the mango tree that thrives in the verdant vale hard by the emerald cave.

In genre terms D8 is unique. Each chapter consists of about a dozen questions sent to Kaingza by the king, along with Kaingza's considered replies. The king cites popular legal maxims and enquires if they are good law. Or the king asks about reforms which have been introduced in D7 and, in effect, invites Kaingza to explain the policy behind the reform. It is partly a commentary on D7, and partly a discourse on what counts as normal legal practice and acceptable legal argument. If we translate *Manuraja* as "Attorney General" and think of Kaingza as a politician who is simultaneously head of the legal profession, then we get a clearer idea of his intentions. Note that between them Thalun, Kaingza and the Taungpila sayadaw challenged the prevailing fiction that the dhammathats could only be changed by restoration to their original purity. They boldly state that some rules in the ancient dhammathats needed reform in current conditions, and proceeded to change them by what amounted to royal legislation. One such change concerned the effects of sworn evidence: the judge's decision could no longer be annulled if the witness suffered a catastrophe within weeks of testifying.[68] Another change abolished the right to make a will.[69]

Forty years on, these events were described in the earliest of Burma's surviving literary histories, Shin Uttamasikkha's *Pitakat Thamaing*.[70] The following passage from this under-used manuscript is my prime piece of contemporary evidence for the rivalry between lawyers and kings:

> Scholars in the reign of Hsinbyushin produced the *Dhammathat-kyaw*. The *Manosara-kye*, written in Pyumin's reign, was translated into

> Burmese in Hanthawaddy during the reign of "second king." During [Thalun's] reign, *Manosara kye* was re-edited into alphabetical order, and renamed *Dhammathat Shwe Kyam* by [the Taungpila sayadaw] and [Kaingza Manuraja]. They did not use the *Kyemin dhammathat kye*. These dhammathats, bedin, kalap, panci, vitak, danti and lokaniti texts are secular works which endanger the path to nirvana. Among them, three dhammathats and [some] dietary medical treatises were written by hermits, but the commentaries on them were written by scholars. Please note this fact! It is only proper and correct that these matters be laid before successive kings.[71]

What does this interesting distinction between trustworthy "scholars" and untrustworthy "hermits" signify? Blaming Manu the hermit for not being a Buddhist scholar is like blaming the Old Testament prophets for not being Christian: Manu the hermit is a contemporary of Mahasammata the first king who lived several eons before Gautama Buddha turned the wheel of the law! "Hermits" could mean anything, from forest monks at the near end of orthodoxy to Brahmans, alchemists and animists at the far end. But I take it that in this context "the hermits" represent the lawyers with their appeal to the authority of Manu the hermit. The implied contrast is between lawyers saying "obey law because it is old" and monks saying "obey law because it is religious." By now the sangha were experts in textual history. Within a century the question of whether *Culaganthipada* was written in 13th century Ceylon or 5th century B.C. India would be, literally, a matter of life or death. To scholars who could confidently settle that question, the absence of evidence that 5th century Sri Lanka knew any dhammathat was becoming embarrassing. The subtext of Shin Uttamasikkha's message might be paraphrased thus:

> We admit that the original dhammathat is not a Theravada document in the grand tradition: its textual history does not go through first millennium Sri Lanka. But the commentaries on it are in the grand Theravada tradition, so we monks are the ultimate legal authorities as long as we can ground its content in canonical literature.

Why is it worth mentioning that Kaingza et al. did not use *Kyemin*? Because, I surmise, *Kyemin* was typical of the newly discovered dhammathats which the lawyers were busily citing in court. The sentence stands for the purification of the dhammathats, the expulsion from legal discourse of certain works popularized by lawyers in the previous century. Pronouncing an anathema on texts is one thing: making it stick is quite another. The only way to test whether Thalun in fact had the power which he asserted to control lawyer's discourse was to wait a century and see whether lawyers are still doing as Thalun had bid them.

A century after Thalun, his great-great-great grandson, the last of the Toungoo dynasty kings, occupied the throne. Two dhammathats, both written by

monks but otherwise very different, were produced in his reign (1733–52). Firstly Shin Maha Buddhingura, sayadaw of the Heir Apparent's monastery, compiled the *Kitti dhammathat kyaw* [D10] which completely ignores the legal innovations of Thalun's reign. Analysis of the sections on Inheritance in the Digest reveals neither references to nor parallels with D7 and D8, King Thalun's official dhammathats. The largest bunch of parallelisms are with *Dhammavilasa* [D4], but exactly half of the sections quoted are unparalleled in the surviving old dhammathats. This indicates that it preserves an old textual tradition otherwise lost to us; the various literary histories identify this source as *dhammathat kyaw* or *kitti dhammathat* written by eight judges between 1581 and 1599. In the 1740s Buddhingura is ignoring the reformed royal dhammathats of the previous century in order to reproduce textual traditions from 150 years before. *Kitti* is connected with the lawyers' dhammathats of the 16th century, so in practice, if not in intent, he was preferring the lawyers' claim to Thalun's claim. I have looked hard for evidence of Buddhingura's motives. If we can identify him with the *Sasanavamsa*'s "Buddhankura" of the reigns 1698–1733, then he was one of the four leading one-shoulder monks of the period, and we can speculate about an alliance between lawyers and the one-shoulder tendency. But identifying monks from a single literary reference is a mug's game. Mabel Bode warns:

> These small bibliographical puzzles, which we are not willing to leave unsolved but must waste much time in solving, result sometimes from the choice of well-known or well-sounding Pali names by theras of different epochs and their pupils, commentators and copyists, sometimes from the renaming of distinguished teachers by their royal admirers.[72]

The second dhammathat produced in this reign was *Vinnichayarasi* [D18] by Shin Khemacara, a pupil of the king's MDRG. This is my personal favorite among the Burmese law texts. While the Pali dhammathats written later in the century give off an odor of scholasticism, Khemacara, writing in simple Burmese prose, gives us an idea of what a good popular sermon of the period might have sounded like. He cites some older dhammathats—Manuyin, Manosara, Manusara, Manussika and Dhammavilasa—by name, but he wants to ground every rule in scriptural authority. When he can, therefore, he illustrates each rule with extensive and learned quotations from the Pali canon.[73] *Vinnichayarasi* combines the conventions of legal scholarship (the citation of earlier dhammathats) with the conventions of religious scholarship (the appeal to the Pali canon and its commentaries). Its implied message is that Burmese law is, after all, Buddhist law, and the sangha must therefore be the ultimate judge of what is proper.

In 1752 begins a new reign, a new dynasty and a new approach to monastic discipline. King Alaungpaya, the founder of the Konbaung dynasty, appointed Atula, a prominent one-shoulder monk, as his MDRG. The appointment led to the production of an important law text, the *Atula pyatton*. This is a case-book, a

collection of law reports "compiled from the pleadings of fifty lawyers and twenty five judges," the common denominator of which is that a monk, or group of monks, appears as plaintiff or defendant. As MDRG, Atula was the conduit through which monks were summoned to appear in court,[74] and he must have arranged to be sent written reports of all the cases which crossed his desk. Sometime after the incoming king replaced him in 1760, Atula edited these records into a single manuscript. This work, or some other aspect of Atula's tenure in office, stimulated an energetic counter-reaction by the two-shoulder monks which manifested itself in the production of several new dhammathats in Pali and Burmese verse. I shall examine these "antiquarian" legal works shortly. First we must consider why Atula was regarded as a *legal* threat, and why the battle should be fought around *legal* literature. The important dhammathat produced in Alaungpaya's reign was *Manugye* [D12], the best-known and most accessible of all the Burmese dhammathats. To know *Manugye* is, in a sense, to know the whole genre, since it is as much an encyclopedia of legal argument as a through-composed textbook. Whether its author was a lawyer before being appointed minister in charge of the capital city moat is unknown. But in true legal fashion he prefers the virtue of all-inclusiveness to the principle of non-contradiction. It offers in Burmese prose a storehouse of different rules on each issue without expressing a preference between them. And yet, on the important points where Thalun attempted to legislate, it does not cite material that contradicts Thalun's approach. If *Manugye* represents what lawyers thought in the 1750s, it is evidence that they had changed their practice in accordance with Thalun's wishes. Retrospectively, Thalun's assertion of a power to legislate was proving successful. The *Kitti dhammathat kyaw* was evidently a last ditch and unsuccessful attempt to set the clock back to the 16th century. But if Thalun's assertion of a power to legislate was now proving successful, this could have sinister implications for those monks who were out of favor in palace circles. If previous kings successfully asserted a right to change secular law by legislation, why should they not assert a right to change the text of the Vinaya, or at least the interpretation of the text of the Vinaya, by legislation? No one minds a royal purification of the sangha as long as the king enforces your version of orthodoxy. What frightened the two-shoulder monks under Alaungpaya was the prospect of a purification with the wrong guys in charge.

This is the background to the formation of the group of two-shoulder monks whom I shall call "the Committee for the Promotion of Pali Dhammathats." The senior monk and leading light of this group was the Taungdwin Sayadaw.[75] During the last years of Alaungpaya's reign, he encouraged Lankasara,[76] one of his pupils who showed talent as a poet in the Burmese language, to apply it to versifying the old dhammathat traditions. The resulting work, *Kandaw pakeinnika linga* [D13], appeared two years before Alaungpaya's death. Lankasara went on to be a one-man "Committee for the Production of Dhammathats in Burmese Verse": eight of his verse dhammathats are listed in the Burmese literary history written in the 1830s. Alaungpaya's son and successor appointed the

Taungdwin sayadaw as MDRG but would not sponsor a purge on the one-shoulder monks. It was at this stage, I surmise, that the Taungdwin sayadaw set up his committee. Its initial membership comprised Candapanna and Tejosara from the sangha and Myat Aung, who had recently left the sangha for a career in government service.[77] Candapanna is mentioned by the *Sasanavamsa* as a bulwark of two-shoulder orthodoxy while Myat Aung trained under Shin Candavara, a two-shoulder luminary who was to succeed the Taungdwin sayadaw as MDRG. By 1772 the Taungdwin sayadaw had died, and been replaced on the committee by the Sinde sayadaw,[78] who was twenty years younger and an equally fervent two-shoulder protagonist.[79] Tejosara was the first to complete his assignment: his *Shin Tejosara Shwe Myin* in Pali [D14] was completed in 1760 "having," as the preface boasts, "been solicited by the Prime Minister." The next three committee works came out under the name of Myat Aung: *Vannadhamma Shwe Myin* in Pali [D15] in 1768, *Vinicchaya Pakasani* in Pali [D19] in 1771 and *Manuvannana* in Pali [D20] in 1772. It is the second of these works in particular which clarify the aims and objectives of the committee:

> This is in accordance with what the ancient dhammathats say on the subject. These ancient authorities are taken exception to by the compilers of [D7 and D8] as being inconsistent with the Vinaya. The present compiler has, to avoid adverse criticism, merely mentioned what the ancient jurists have laid down. Monks have, in the Vinaya, their own rules to go by, and these will be given later.
>
> (D:1.397 [D19])

> Dhammathats like [D7] and others qualify the statement that a lay pupil shall not inherit from a *rahan*. This rule is inconsistent with the Vinaya and I have attempted to reconcile them. Readers must use their own discretion in the application of these rules.
>
> (D:1.406 [D19])

The Committee is in general concerned about the interface between Vinaya and dhammathat and in particular has a quarrel with Kaingza's two legal works. The Committee shared with the 17th century legal profession a hostility towards the legislative ambitions of Thalun, Kaingza and the Taungpila sayadaw. But they had different reasons for their hostility. The lawyers and the king were engaged in rivalry over who should control law. Unlike the similar rivalry in 17th century England, there were no constitutional implications. The lawyers did not want a constitutional monarchy but simply a wide selection of texts from which to argue. *Manugye* gave them the kind of dhammathat they needed, and thereafter they conceded Thalun's right to legislate. His posthumous reputation was his winning card: his reign was remembered as a period of firm government at home and peace abroad. The Committee's objection is more principled: ancient texts are always to be preferred to modern texts, and the issue of legitimacy is to be

decided on grounds of textual authenticity, rather than legislative competence. They can avoid criticizing King Thalun outright: the claim to legislate is obviously a misunderstanding caused by the unfortunate use of the Burmese vernacular in Kaingza's *Maharajathat* [D8]:

> Kaingza's [D8] has been misunderstood and applied to cases in a manner never contemplated by him, because it was written in Burmese. Unless a dhammathat is written in Pali, it cannot retain its original meaning. The rules of law are the contents, and the Pali language the proper container.
>
> [D19, Exordium]

King Thalun attempted a new style of legitimating argument: "Obey law because I, the king, say so." The 18th century lawyers appear to be saying "Our professional practice a century after Thalun is to recognize his reforms as valid." The Committee, fighting a rear-guard action, says "Obey law because it is old. Obey law because it is in Pali. Obey law because expert monks certify it as being authentic." The Committee, in short, wants law to be legitimated for exactly the same reasons that Buddhism is legitimated as the true religion and the Mahavihara traditions of Sri Lanka as the true form of Buddhism. But if law is to be obeyed because it is Buddhist, what is to be done with well-established Burmese rules which have no Canonical origin? Khemacara hoped such cases did not exist: if you kept on looking through the Buddhist literature you would eventually find a scriptural model. Forty years later, in *Rajabala*, one of the Pali dhammathats influenced by the Committee, the distinction is drawn between law (presumably originating in the Buddhist scriptures) and local custom (which refers here to a rule applicable all over Burma):

> It is only in compliance with local custom that the son-in law is required to serve his parents-in-law three years before he may leave them.
>
> (D:2.319 [D23])

The Taungdwin sayadaw's campaign to promote the dhammathat as work of art and monument to classical scholarship was certainly responsible for the five works I have mentioned. What other effects did it have? For fifty years dhammathat production was shifted dramatically from plain Burmese prose into the exotic channels of Pali prose, Pali verse and Burmese verse. Between 1733 and 1758 all four dhammathats produced were in Burmese prose: between 1758 and 1819 only one of the fifteen dhammathats produced was in Burmese prose. It is all too easy to be seduced by conspiracy theories and to see the inspiration of the committee behind each of these works. But by Badon's accession in 1781 the movement had probably developed its own momentum. By then each of the authors associated with the Committee had advanced their career in the Order or

in public service. "If you want to get ahead, write an antiquarian dhammathat" must by then have seemed like plain common sense. I give details of these authors and their works in the form of a table, which fails to highlight the striking role played in the politics and literature of the period by high ranking monks who disrobed in middle age at the king's invitation in order to serve him as minister. Myat Aung had not risen far within the Sangha before disrobing and producing his three Pali dhammathats. But the Chaunggauk sayadaw,[80] author of D22 and D23, and the Maungdaung sayadaw[81] are good examples of this startling phenomenon. The latter was King Badon's MDRG when in April 1784 he brought a century of dispute and intrigue to an end by purging the sangha of the one-shoulder tendency. Atula was sentenced to death by exposure in the northern forests, but reprieved the next day. Instead he and his sizable band of followers were forcibly disrobed and thereupon disappear from history.[82]

What did the Taungdwin sayadaw's committee achieve? Ultimately their side won and the one-shoulder faction was eliminated, but the credit for this belongs entirely to Badon, a king strong and determined enough to intervene. The dangers of relying on the king to purify the sangha were underlined when Badon later pressed his own unique Buddhist theology on the sangha. The Committee did not affect the practice of the legal profession. No matter how many elegant works of antiquarian legal scholarship they produced, they were not going to persuade the Burmese lawyers to exchange courtroom badinage in Pali or address the judge in perfect Burmese verse. The immediate effect of their campaign was to draw a distinction between "working dhammathats" in Burmese prose and "antiquarian dhammathats" in verse or Pali. The only dhammathat to be produced in Burmese prose between 1758 and 1800 is intended as a working lawyers' reference book on inheritance "to enable one to grasp the subject at a glance, just like a bee who gathers pollen to convert to honey."[83] 110 of its 134 sections are taken straight from D11 and D12, which shows that authors concerned with practical legal purposes ignored the recent antiquarian material and went back to consult the Burmese prose dhammathats of the early 18th century. The Committee did, however, produce an unintended longer term effect. Their activities were eventually to persuade the British that Burmese law texts were arcane, obscure and impractical. When the colonial government arranged for some dhammathats to be printed in the early 1880s, the four works chosen were all Committee productions: Myat Aung's three Pali dhammathats and one of Lankasara's Burmese verse texts. Exposure to these four works went a long way to persuade the British that Burmese pre-colonial law had been unchanging, backward looking and obscure. It deepened the contempt which the British felt for the institutions of Mandalay and therefore encouraged them in the wanton destruction of the social system in which Burmese Buddhist Law had flourished. However this story, which explains much of Burma's present *anomie*, falls outside the scope of this paper.

How did the Committee fare in their campaign against legislation? Inevitably, as the Konbaung dynasty developed a stronger bureaucracy, it came to exercise

LAW AS ART
18th Century Dhammathats showing the influence of the "Committee for the Promotion of Pali Dhammathats"
Names of committee members appear in bold type.

Regnal years	*dhammathat*	*author*	*King*	*genre*	*Head of Sangha*
1733–52			*Rajadhipati*		*Kyaw Aungsanta Sayadaw*
	D18	Khemacara		Burmese prose	
	D10	Buddhinkura		Burmese prose	
1752–60			*Alaungpaya*		*Shin Atula*
	D11	Letwe Nandasithu		Burmese prose	
	D12	Bhummajeya		Burmese prose	
	D13	Twinthinwun		Burmese verse	
1760–3			*Naungdawgyi*		***Taungdwin Sayadaw***
	D14	**Tejosara**		Pali	
1763–76			*Sinbyushin*		*Candovara*
	D16	Twinthinwun		Burmese verse	
	D17	Twinthinwun		Burmese verse	
	D15	**Myat Aung**		Pali verse	
	D19	**Myat Aung**		Pali verse	
	D20	**Myat Aung**		Pali verse	
	D24	Sonda Sayadaw		Pali verse	
1776–81			*Singu*		*Manle Sayadaw*
	D21	Letwethondara		Burmese verse	
	D22	Chaunggauk Sayadaw		Pali verse	
	D23	Chaunggauk Sayadaw		Pali	
	K44	1st Monywe Sayadaw		Pali	
1781–1819			*Badon*		*1st Maungdaung Sayadaw*
	D25	Ketuja		Pali	
	D26	Panam Wungyi		Burmese verse	
	D28	Pe Thi		Burmese verse	
	D29	Candasu		Burmese verse	
	D30	Shwe Po		Burmese verse	

something nearer and nearer to legislative power. In the second half of the 19th century King Mindon clearly borrowed techniques and forms from British legislative practice but, even without the British example, I think the 19th century kings would have developed as much legislative power as their Siamese contemporaries. But in both countries it was less a constitutional entitlement of royalty than a status which they had to earn. Thalun's legislation achieved posthumous recognition because history remembered him as a purveyor of peace and plenty. The 19th century kings were hard put to emulate his reputation when their kingdom was disappearing in slow motion to the British. The last king to rule over the whole of "Burma proper" and the last king who could claim to be a *cakkavattin* without provoking guffaws was Badon. My analysis of Badon's

legislative practice is a convenient place to end this account of Burmese institutional rivalry over law and its legitimacy. Shortly after his succession Badon promulgated a short Royal Order on legal matters [ROB 3–3–1782]. All but one of the twelve sections confirm "business as usual"—the popular maxims that relieve indebtedness continue to apply, fees for judges and lawyers should be fixed, and the hereditary succession of village chiefs should continue. The twelfth section, where the king allows property to be inherited by the parents and grandparents before it escheats to the crown, may involve a change in the existing law but it is a concession against the royal interests—a generous gesture by a newly enthroned king. This business-like Order is typical of the rajathats produced by earlier kings. But 13 years later, after Badon had purified the sangha and revamped its disciplinary structure, he promulgated a unique rajathat that is his own contribution to the long debate over control of the law texts. ROB 28–1–1795 was widely circulated during and after his reign, and drawn to the attention of judges and ministers by several later Orders. Modern scholars have long been aware of its importance, and two full translations of it exist.[84] In legal content it adds nothing to his accession order 13 years earlier, but in presentation it is something else. It is a monument of Buddhist scholarship, a compilation of legal lists from canonical sources, Jataka stories with some legal or ethical bearing and provisions from the Vinaya which the laity should emulate. It is the king's response to the claim that Burmese law should be obeyed because it is Buddhist. His implied message is: Yes—Burmese law is Buddhist, but this does not mean that only learned monks like Khemacara can justify law in terms of Buddhism. Nor does it imply the Committee view that Buddhist law must be written in Pali. I, your king, am fully capable myself of linking the Buddhadhamma to dhammathat and rajathat. Was he capable? Was he sufficiently well-versed in the scriptures to make the Royal Order's allusions to 21 different canonical jataka or to take passages from all over the Sutta pitaka and the commentaries? It gives every impression of having been drafted by a monk, and I strongly suspect the hand of the Maungdaung sayadaw, who among his other duties was a sort of Poet Laureate to Badon. But if it was ghost-written on Badon's behalf, this was kept uncharacteristically quiet. Evidently it was important to portray the order as the king's own work.

There are no clear victors in the institutional rivalry which I have been discussing. The lawyers succeeded against Thalun in one sense—D7 and D8 never became uniquely official sources of law—but lost to him in another—the 18th century lawyers recognised the posthumous legitimacy of Thalun's legislation. The monks succeeded in one sense—Khemacara put the Buddhist legitimacy of the law at the center of 18th century debate—but lost in another—Badon successfully challenged the sangha's claims to be the sole judge of whether law was sufficiently Buddhist. The kings succeeded in establishing a right to posthumous legislative competence, but the right was only available to kings posthumously judged to have been successful. Such muddled compromise is typical of any country's constitutional history. The U. K. and U. S. A. have a tradition of

enshrining the compromise in a Bill of Rights or Constitution—a binding document which is then interpreted legalistically. In Burma this did not happen. Instead of a single constitutional convention they had an ongoing constitutional conversation. To contribute to the "dhammathat and rajathat" genre was to join in that conversation. Its ostensible topic was the relationship between Buddhism and law.

Notes

1 Hoebel, 1954, *The Law of Primitive Man*, (Harvard) 291; Newman, 1983, *Law and Economic Organization*, (Cambridge) 187.
2 Leach, 1954, *Political Systems of Highland Burma* (London) 56.
3 I have taken this phrase from Ghokale, 1966, "Early Buddhist Kingship," *Journal of Asian Studies* 26: 20.
4 Than Tun warns that this rajathat may have been written later in the century than the date it bears. Citations in the form "ROB date" are to Than Tun, 1984–90, *The Royal Orders of Burma, A. D. 1598–1885*, Vols. 1–10 (Tokyo).
5 References in this form are to U Gaung, 1902, *Digest of the Burmese Law being a Collection of Texts from Thirty Six Dhammathats* (Rangoon). D1:5 indicates s.5 of the first volume; [D18] indicates the quotation in that section from the dhammathat numbered 18 in the list at pages 5 to 13. D18 is Shin Khemacara's *Vinicchayarasi*. I must apologise to readers who are upset by the lack of diacritics in my transliteration of Burmese Pali. Since they are not used when transliterating the Burmese language, I have come to regard them as visual distractions.
6 Before Professor French started publishing, I would have said "lags two or three centuries behind."
7 Forchhammer, 1885, "The Jardine Prize: An Essay" (Rangoon); Leclère, 1898, "Recherches sur les Origines Brahmaniques des Los Cambodgiennes," *1889–9 Nouvelle Revue Historique de Droit français et étranger* 1 (N. p.); Masao, 1905, "Researches in the indigenous laws of Siam as a study of Comparative Jurisprudence," *Journal of the Siam Society* 2: 14, and *Yale Law Journal* 15: 28.
8 Wigmore, 1928, *A Panorama of the World's Legal Systems* (Washington) 224.
9 Weber, 1954, *Law in Economy and Society*, ed. Rheinstein (London) 236.
10 Hall, 1981, *A History of S. E. Asia* (London) 292.
11 Derrett, 1973, "Dharmasastra and Juridical Literature," *A History of Indian Literature*, ed. Gonda (Wiesbaden).
12 Since Forchhammer wrote on Burma, the following basic research has been published: U Gaung's Digest of Burmese dhammathats, Than Tun's full collection of rajathats, Nai Pan Hla's eleven Mon dhammathats and (most importantly for the study of Burmese origins) the complete Pagan inscriptions.
13 Colloque International sur la reception des systemes juridiques, Moncton, N. B, September 1992. In the next two pages I am summarizing arguments which I made in wearisome detail in my presentation to that conference: Huxley, 1994a, "The Reception of Buddhist Law in S. E. Asia," *La Réception des systèmes Juridique: implantation et destin*, eds. Doucet and Vanderlinden (Bruxelles) 139–237.
14 The whole inscription, with its discussion of kamma, punishment and their interrelationship, is Buddhist through and through. For a specific borrowing from the Pali canon, note the "12 royal punishments" from any one of these three sources: A II 1; M III 17; Mil IV.4.15.
15 Derrett 1973.
16 For details of this procedure, see Huxley, 1993, "Thai, Mon and Burmese Dhammathats —Who influenced whom?" 5th International Conference on Thai Studies, London

1993. It will appear in *New Light on Old Thai Law Texts*, Kiscadale Asia Research Series, ed. Huxley.

17 In fact we have several *Dhammavilasa* manuscripts in Burmese, the differences between which bear mute witness to "fermentation." Furthermore, two radically different versions of *Dhammavilasa* have survived in the Mon and Arakanese languages: *Mon Dhammavilasa* [M3] and *Kyetyo* [D35]. If anyone ever has the ambition to produce critical editions of the Burmese law texts, they could start with this group of manuscripts, all of which provide variations on the same 12th century original.

18 Numbers with an M prefix refer to the Mon dhammathats published in Nai Pan Hla, 1992, "Eleven Mon Dhammathat Texts," *Bibliotheca Codicum Asiaticorum* Vol. 6. I have given details of the numbering scheme in Huxley 1993.

19 Reid, 1988, *The Land below the Winds* (London) 137.

20 Manu VIII.204. Found in *Pyumin* [D3], *Dhammavilasa* [D4], *Wageru* [D5] and thrice in *Manussika* [D2].

21 Manu IX, 69. Found in *Manosara* [D1], *Manussika* [D2], *Pyumin* [D3], *Wageru* [D5], *Long Mon Sangermano* [M1] and *Short Mon Sangermano* [M2].

22 Manu VIII.304. Found at D2:10 in *Manussika* [D2] and in *Mon Duttabaung* [M6]. However, Glucklich suggests that Buddhist notions on karma had a strong influence on the writers of the *Manusmrti*. Possibly, then, there is a Buddhist source for this rule which fed both *Manusmrti* and *Manussika*? See Glucklich, 1982, "Karma and Social Justice in the criminal code of Manu," *Contributions to Indian Sociology* 16: 59.

23 Kautilya's Arthasastra 3.11.34–7. A less detailed version is in Manu VIII.88. Found in *Long Mon Sangermano* s21, and garbled in *Short Mon Sangermano* s3.

24 Manu IX, 13. Found as a slightly different list of six in three Mon dhammathats: *Wageru* [D5], *Long Mon Sangermano* [M1] and *Mon Dhammavilasa* [M3]. The Burmese *Manosara* [D1] has a list of five.

25 Manu III.20–42. A list of eight is in *Dhammavilasa* [D4]. Both give eight technical names for each form of marriage, but even allowing for the translation from Sanskrit to Pali, only two of these are similar.

26 Manu IX.158–168; *Vishnu Samhita* ch. XV. *Wageru* [D5] and *Manosara* [D1] share a version of the 12 sons. A different list is shared by *Pyumin* [D3] and *Kyannet* [D36]. *Mon Dhammavilasa* [M3] expands the list into 16 types of son. So does *Dhammavilasa* [D4], adding that "the list comes from the Pitakat," i. e. the Pali Canon!

27 Manu X.150–155 offers two schemes of division. Either the Brahman wife's son gets a special portion and the inheritance divides 3:2:1#fr1/2>:1 or the special portion is omitted and the inheritance divided 4:3:2:1. None of the early dhammathats mimic the first form of division. They all start from the 4:3:2:1 division, though there is considerable variation. I give fuller details of the Mon and Burmese texts in Huxley 1993, 20–21.

28 Manu IX.76 has 8 years if husband absent on a sacred duty, 6 years if in pursuit of knowledge, 3 years if in pursuit of pleasure. D1-D5 all mimic the text, but give different periods and different reasons for the husband's absence.

29 Stargardt, 1990, *The Ancient Pyu of Burma* (Cambridge); Higham, 1989, *The Archaeology of Mainland S. E. Asia* (Cambridge).

30 Calder, 1993, *Studies in Early Muslim Jurisprudence* (Oxford).

31 The Pasupatas were an antinomian sect of Brahmans who deliberately courted pollution by traveling abroad to dwell among the barbarians. Their involvement in the notebook period is demonstrated by the inclusion of the *kapilakavrata* rites of penance (which was their social charter] in three of the early dhammathats: *Pyumin* [D3], *Kyetyo* [D35] and *Mon Dhammavilasa* [M3].

32 Gray, 1886, *Ancient Proverbs or Maxims from Burmese Sources, or The Niti*

Literature of Burma (London) translates these three old works and adds an 18th century collection.

33 *Dhammaniti*, for example, quotes a verse from *Manusmrti* on the king getting one sixth of his subjects' merit and a verse from the Vinaya listing the four kinds of slave. [Dhammaniti s281 = Manu VIII.304; Dhammaniti s177 = V IV 224] Both these texts, as we have seen, are also found in the dhammathats.

34 Sternbach, 1963, "The Pali Lokaniti and the Burmese Niti Kyan and their Sources," *Bulletin of the School of Oriental and African Studies* 26: 329.

35 Browne, 1878, *Introduction to Manuwonnana dhammathat* (Rangoon) 1.

36 Shwe Baw, 1955, "The Origin and Development of Burmese Legal Literature," diss., School of Oriental and African Studies (thesis #41 held at the Institute of Advanced Legal Studies Library).

37 In the above example, which totals 33, I presume we are meant to leave out the "one kind of fair case."

38 His most helpful remarks are not in the "Prize Essay" but hidden away in *Jardine's Notes on Buddhist Law* (1882–3)(Rangoon): In his note to s145 of *Manuwonnana* he says "The *Samanta Pasadika* and Buddhaghosa's *Visuddhimaggo* form the chief source of the purely Buddhistic portion of the Burmese dhammathats."

39 Jackson 1975, "From Dharma to Law," *American Journal of Comparative Law*: 490.

40 Lingat 1949, "The Buddhist Manu or the Propagation of Hindu Law in Hinayanist Indochina," *Annals of Bhandaka Oriental Research Institute* 30: 290.

41 s.33 Wageru; cf *Uggaha sutta*: A III 36.

42 s.38–40 Wageru; cf *Sujata jataka*: A IV 91; J II 347.

43 s.194 Wageru, cf J I 260; V I 339; J II 1.

44 Found in *Manussika* [D2] and in the Burmese, Mon and Arakanese *Dhammavilasa* [D4, M3, D35] at D2:215. cf A II 57–9

45 Found applied to the laity in *Manussika* [D2], *Pyumin* [D3], *Dhammavilasa* [D4] etc. As a rule applying to monks and novices, it is in Mahavagga VIII.27.

46 This list, found in V III 139, must be the inspiration behind *Pyumin*'s [D3] list of 12 and *Manussika*'s [D2] list of 14 such protectors in D2:28.

47 *Wageru* [D5] s194; *Maharajathat* [D8] p218 has them as the first four items in a list of 12; *Manugye* [D12] p156 has them in a list of "7 men who should not be judges."

48 Mangraisat s82 and s88 of Aroonrut Wichienkeeo and Gehan Wijeyewardane, eds., 1986, *The Laws of King Mangrai* (Canberra).

49 I am summarizing the khmer version: Leclère, 1898, *Codes Cambodgiens* (Hanoi). I understand that the Thai version in the Three Seals Code is identical.

50 Jardine 1882–3. Note to *Manuwonnana* s107.

51 In Bapat's English translation of the Chinese translation, which I am using, it is on page 234–8. Bhapat and Hirakawa, 1970, *Shan-Chien-P'i-P'o-sha* (Poona).

52 *Mangraisat*: s73 of the 1986 version published in Canberra; s 19 of the 1977 version published in *Journal of the Siam Society*.

53 *Manugye* [D12] p. 13–15. The discussion is interpolated into the tale of Manu's judgment of the *Squirrel v Rat* case.

54 Bapat and Hirakawa 1970, 232.

55 *Mon Dhammavilasa* [M3] s3; ROB 28–1–1795 s5; *Manugye* [D12] 110–3.

56 Sommai Premchit, *et al.*, 1986, *Lan Na Literature: a Catalogue of 954 Secular Titles on Microfilm* (Chiang Mai).

57 See E Maung, 1951, *The Expansion of Buddhist Law* (Rangoon), Shwe Baw 1955, and Dev Raj Chanana, 1966, "Social Implications of Reason and Authority in Buddhism," *Indian Economic and Social History Revue* 3: 295.

58 Forchhammer 1885 is the earliest and most detailed of the three scholars. But on page

44 he likens Burmese law and Hindu law to "the *sister* languages Sanskrit and Pali, which have a common parent but are not derived from each other."

59 Hart, 1961, *The Concept of Law* (Oxford).

60 Gray 1886, "Lokaniti" footnote to s388.

61 The loss of innocence is recorded in the 18th century *Manugye* [D12] III 19–20 which lists "the 12 ways in which debtors and creditors can cheat each other over a written debt agreement."

62 For another example of the vowel shift between Mon and Burmese, compare the names of the king of Thaton defeated by the king of Pagan in 1057: in Mon he is known as "Manohari" and in Burmese he is "Manuha."

63 That *Dhammavilasa* was commissioned by the king is only an inference from the wide spread of the manuscript. *Pace* Forchhammer, the Kalyani Inscriptions do not state that the king commissioned the monk.

64 The British Library ms. copied in 1749. Rangoon National Library has a later manuscript entitled *Dhammavilasa Manu Mano dhammathat thamaing.*

65 Dhammavilasa's fame was guaranteed in 1475 by the description of him in the Kalyani Inscriptions. Even during his lifetime, however, his reputation was known as far off as Sri Lanka: see Barnett, 1905, "The Manavulu-Sandesaya," *Journal of the Royal Asiatic Society*: 265.

66 Hla Aung, 1969, "The Burmese Concept of Law," *Journal of the Burma Research Society* 52: 27.

67 Compare ROB 27–7–1785 and *Maharajathat*, 216.

68 Okudaira, 1984, "The Role of Kaingza," *Ajia Afurika Gengo Bunka Kenkyu* 27: 183.

69 See Huxley, 1990b, "Wills in Theravada Buddhist S. E. Asia," *Receuils de la Sociéte Jean Bodin* 62: 66. Evidence that this change happened during Thalun's reign is only circumstantial.

70 This passage is part of the last page of the manuscript printed in Burmese in Bechert, Khin Khin Su and Tin Tin Myint, 1979, *Burmese Manuscripts*, Vol. 1 (Wiesbaden) 172. I am very grateful to my colleague John Okell for the English translation, and to Dr. Lobo of the Museum für Indische Kunst, Berlin, for sending me photographs of the whole manuscript, which is catalogued under the number MIK I 4194.

71 Comparing this with a tabular dhammathat history in English, which I think represents the literary history also called *Pitakat Thamaing* written in the 1820's by the 1st Maungdaung sayadaw, "Hsinbyushin" would be Bayinnaung (1551–81), and "second king" would also be Bayinnaung (meaning the second king of Greater Toungoo?).

72 Bode, 1909, *The Pali Literature of Burma* (London) 28–9.

73 In the Digest excerpts, we find quotations from the following: the *Dhammadayada Sutta*, the *Dhammapada*, the *Vinaya*, *Vessantara Jataka*, *Mahosodha Jataka*, *Mahakunala Jataka*, *Katthaharika Jataka*, *Vinaguna Jataka, Sujata Jataka, Sambhula Jataka, Garudhamma Jataka* and Buddha's sermon to Uggaha. These references typically end with a phrase like this: "Therefore the rule laid down in the dhammathat is in perfect concord with the doctrine contained in the sacred writings" [D2.307].

74 ROB 5–9–1757.

75 Mon Phyo 1724–1762. Monastic name Shin Nana. Title as Head of Order "Nanbhidhamma lankara MDRDRG."

76 Tun Nyo 1726–1809. Monastic name Lankasara. Titles after leaving the Order: "Maha Cannsu" and "Twinthintaik Wun."

77 Listed in s.II of *Vannadhamma Shwe Myin* [D15].

78 See D20 s.II and III; translated in Browne, 1879, preface, *The Manoo Thara Shwe Myeen* (Rangoon) 2.

79 Shin Nanasadhamma, the Sinde sayadaw (1744–1816). He was one of nine elders

honored after Badon's final resolution of the shoulder dispute, and served on Badon's twelve man Committee of Monastic Discipline.

80 Shin Ṣaddhamanandi 1736–93. Disrobed in 1775 and subsequently was awarded the military (!) title "Balaraja" and the administrative title "Atwinwun." In addition to the dhammathats he wrote poetry in Burmese, including "On the Characteristics of Great Men," and the *Suttavaddha Niti*, a collection of edifying ethical and legal material from the Pali Canon.

81 Myat San 1753–1833. Monastic name Nanabhivamsa. MDRG under Badon and master mind of the resolution of the shoulder dispute, until he disrobed in 1812 at the king's invitation. Under his lay title, Mahadhamma Thingyan, he wrote or co-wrote more than 40 works, including the three most crucial sources for 18th century history: *The Glass Palace Chronicle, the Literary History of 1820* and the *Thatthana Wuntha Sadan*, the source of the later and better known *Sasanavamsa*. He perfectly exemplifies the maxim that history is written by its winners.

82 ROB 25–4–1784; ROB 27–4–1784 describes the cunning ruse which Badon adopted to supply them all with lay clothing at no expense to himself.

83 This simile is more usually applied to the behavior of monks on their early morning alms round. Perhaps a hidden metaphor is intended: as lay donors have cooked rice ready to give to the monks, so this book has legal information pre-cooked for all who need it.

84 Kyin Swi, 1965, "The Judicial System in the Kingdom of Burma," diss., SOAS (thesis #22 held at the Institute of Advanced Legal Studies Library); Than Tun, 1983, "The Royal Order (Wednesday 28 January 1795) of King Badon," *Ajia Afurika Gengotenyo Bunkyo* 26: 153–201.

92

THE GREAT TRADITION AND THE LITTLE IN THE PERSPECTIVE OF SINHALESE BUDDHISM

Gananath Obeyesekere

Source: *Journal of Asian Studies* 12, 2 (1963): 139–53.

This paper[1] is an attempt to examine critically the utility, from a methodological point of view, of the approach to peasant culture outlined by the late Robert Redfield in his book *Peasant Society and Culture*. We shall inquire how useful his concepts are for understanding the nature of peasant culture, specifically using as our example the culture of the little community in Ceylon.

Redfield's approach to peasant culture as presented in his book is so well known that the briefest summary should suffice here. According to Redfield, the culture of a peasant society is not autonomous, but an aspect or dimension of a civilization of which it is a part. As a peasant society is a half-society, so peasant culture is a half-culture. It is fully comprehensible only in relation to the civilization in which it is contained. In order to grasp the compound nature of peasant culture, Redfield employs two important concepts—the great tradition and the little tradition. In any civilization, there is a great tradition of the reflective few, and a little tradition of the largely unreflective many. The societal dimensions of these two traditions are the great community and little community. Thus, the great tradition is the culture of the great community of priests, theologians, and literary men who may not even have seen the village. Those two traditions are not mutually exclusive, but interdependent—"two currents of thought and action, distinguishable, yet ever flowing into and out of each other."[2]

Redfield's reaction is against the traditional anthropological assumption, fostered by the anthropologists' experience in primitive societies, that culture and social structure are coterminous, incarcerated, so to speak, within the physical bounds of the particular group studied. Redfield suggests that peasant society and culture are in an empirical sense "open," and that it is necessary to give this openness conceptual formulation. While both Redfield and McKim Marriott have demonstrated the connections that exist between the culture of a peasant

society and the larger civilization in which it is contained, the concepts they employ need critical reevaluation and clarification. As Dumont and Pocock say, Redfield assumes that any peasant culture is a composite structure consisting of a great and little tradition, whereas it is doubtful whether the great tradition is in fact institutionalized in that manner in the little community. Methodologically, Dumont and Pocock further point out that it is desirable to approach peasant culture as a single tradition—a little tradition—contrasted with a doctrinal and philosophical great tradition.[3]

Viewed in this light, the so-called misinterpretations given to ideas and activities derived from the great tradition have some purpose—they have been recast and reformulated and brought into line with the peasant world view. They are "misinterpretations" or "crudities" if viewed from the perspective of the great tradition; if viewed from the peasants' perspective, they may be a part of a single meaningful tradition. Peasant culture, in other words, is *not* a half culture, as Redfield says it is.[4]

The average person's identifications occur within a single tradition, and his roles are meaningful mostly in relation to this tradition. It is, however, possible that there may exist in a village a religious virtuoso or intellectual who may have rejected the village tradition, and such a person properly is no peasant. There are also, almost inevitably, some who have rejected part of the tradition of the masses as undesirable or unworthy. These again have done so by virtue of intellectual contact with the higher thought of their country. Such cases, by no means exceptional, are important, for they illustrate the constant ideological intercourse between the two traditions—an intercourse often leading to cultural change.

The notion of a great tradition is not new, but has been held by scholars for some time, as Redfield, too, admits. Its diffusion to social science, however, is due largely to him. Many social scientists studying peasant societies in Southeast Asia have explicitly or implicitly held the notion of a great tradition, its manifestation on the village level, and its syncretism with a little tradition of popular belief. Redfield himself may have decried the uses to which this idea has been put because its use has led to several pitfalls and misconceptions:

(1) It has encouraged the equation of peasant beliefs derived from a great tradition with the great tradition itself. We have seen this in Marriott; we see it in Ryan and, more recently, in Kaufman. Ryan in his study of a Sinhalese village entitles one chapter "From Buddhism to the Wonderful World" and another "The Wonderful World: Gods and Demons"—the former, of course, reflecting a great tradition and the latter "folk supernaturalism" or "animism."[5] Kaufman, in a similar study of Thai community, could speak of "Buddhist Rituals," "Brahman Buddhist Rituals," and "Predominantly Brahmin-Animistic Rituals,"[6] In Kaufman's study, confusion has been multiplied, for according to him, there is manifested in the village not one great tradition, but two—Brahmanism and Hinayana Buddhism. Ryan, too, speaks of Hindu deities in Sinhalese Buddhism. Distinctions of this order are at best based on diffusionist criteria. These

beliefs may be Brahman and Buddhist in a historical-diffusionist sense, but synchronically and behaviorally-viewed they are "native" Thai or Sinhalese, and an integral part of a living religious tradition. It is certainly legitimate (and often necessary) to study the origin of various beliefs in a given religious tradition, but in doing so one must maintain a strictly historical perspective. In confusing the historical dimension with the behavioral, these writers have posed a fundamental methodological dilemma.

(2) The notion of a great and a little tradition has led to the structuralization of the religious system of a given village in terms of levels, layers, or strata, the image being that of horizontal layers, one on top of the other. "Animism, our third level of beliefs, underlies both Brahman and Buddhist practices, and is for the former indistinguishable from the latter two."[7] DeYoung writes: "Buddhism and Brahmanism have become so closely interwoven as to be indistinguishable to the ordinary Thai worshipper."[8] If these "layers" are indeed indistinguishable to the Thai worshipper, the anthropologist surely does violence to the data by conceptualizing them as "layers."

(3) The image of cultural layers has led in turn to the notion of a supernatural or "animistic" residue. The bogey of "animism" has long haunted missionaries and intellectuals interested in peasant communities in South Asia. To most people, the practices and beliefs of the village seemed flagrantly to violate the ideologies of the great tradition of the area. Although subscribing nominally to a great tradition, these people were "animists." Rarely was the term animism clearly defined; it became a convenient label under which one could subsume beliefs or customs he did not fully comprehend or was impatient with. Even Slater, who wrote one of the more sophisticated studies of Burmese Buddhism from a behavioral angle, could not dispense with this loosely defined but convenient term.[9] The social scientists wedded to the image of cultural layers have perpetuated the "animistic myth"; the residue of beliefs and rituals which could not be subsumed under a single great tradition or traditions were conveniently lumped together as animism, or supernaturalism. "The Thai peasant practices the Hinayana form of Buddhism which, through the centuries, has become so blended with Brahmanism and with elements of an earlier animism that it is impossible to segregate pure elements of each."[10] If it is impossible to segregate "pure elements," why attempt to do so? The concern for pure elements arises from an attempt to see the religion of the little community in terms of levels, derived from great and little traditions. No attempt has been made to understand precisely the nature of this "animism," its place in the peasant religious tradition, or its links with beliefs derived from the great traditions.

The present paper takes the view that as an approach to peasant culture, the Redfield-Marriott position is basically sound; but in view of the criticisms we have made, it has to be reevaluated. As we see it, in any civilization there is a great tradition and a great community, and on the other hand, many peasant societies or little communities. In Ceylon, the religious great tradition of the civilization is Theravada Buddhism, with its corpus of Pali texts, places of worship,

and a great community of monks. The doctrines of Theravada Buddhism are embodied in this corpus, and their expositors are the Buddhist order of monks. But what about the little community or the peasant society, which is after all the focus of anthropological inquiry? Could we view its culture as compounded of a great tradition and a little tradition? Methodologically, nothing is gained by approaching the religion as Buddhist in a great-traditional sense. It is best to see what the existent reality is, for it is too much to hope that the speculations of orthodoxy would be the equivalent of the whole or part of the religious tradition of the masses, whether of the village or the town. It would then be desirable to approach the religion of the Burmese or Thai impersonally or holistically, simply as Thai or Burmese Buddhism, and the religion of the Sinhalese as Sinhalese Buddhism. Viewed in this perspective, Thai or Sinhalese Buddhism is the little tradition—that is, the religion of the masses (little community) in these countries, whereas the great tradition of Theravada Buddhism is really the religion of the greater community of monks, intellectuals, and scholars. Such a conceptual separation has its utility, for it follows from this line of thinking that the religions of the masses in these countries may be vastly different from each other, whereas the great tradition they all share (Theravada Buddhism) is the same. In our conclusion, we discuss the implications of this in greater detail.

Sinhalese Buddhism is a single religious tradition, having important structural links and in constant interaction with the great tradition. It would be impossible to describe the whole Sinhalese little tradition here, but we shall describe certain aspects to show: (1) the various "levels" of beliefs as integral parts of a single tradition; (2) the manner in which these parts are inter-related systematically rather than historically; (3) the structural unity of the tradition; (4) its relationship with the great tradition. This we will attempt by examining both the structure of the pantheon and that of the religious ideology, as far as possible in systemic terms.[11]

The structure of the pantheon

The pantheon described here is neither a Theravada Buddhist nor a specifically "animist" one, but a Sinhalese Buddhist pantheon. The Buddha, gods, demons, and an array of lesser supernatural beings constitute a single pantheon, which displays a wholly consistent structure. Moreover, the gods in the Sinhalese pantheon are not necessarily those mentioned in the Theravada Pali texts, but deities, both "local" and "foreign," who have been incorporated into the pantheon by various mechanisms. For example, the Gods of the Four Quarters, the various Brahmas and Nagas, so often mentioned in the Pali texts, are given only nominal reference in Sinhalese rituals, whereas gods like Vishnu and Skanda, who are worshipped by the same names in Hindu India, play a far more significant role in the pantheon.

The Sinhalese Buddhist pantheon is hierarchically structured and is consonant with a social structure based on a hierarchy of caste. At the head of the

pantheon is the Buddha, who occupies a presidential position in the hierarchy. He is viewed as the repository of power and divine authority—the powers of the other supernatural beings ultimately stem from him. He is not viewed as a creator in the Christian sense, for Sinhalese society has no creation myth, and seems singularly lacking in a motive (supposedly universal, according to some anthropologists) to explain the origin of the world. Nor is he viewed as a deity in the conventionally accepted sense of a being who intercedes on behalf of humans and brings fertility, prosperity, weal or woe. The prayers and rituals addressed to him are not propitiatory or petitionary, but mainly commemorative. Neither does he possess a human status, for by virtue of having achieved enlightenment and obtained release (nirvana), he has transcended his humanity. His most outstanding characteristic is compassion or benevolence. In this respect, the peasant attitude is fairly consonant with the scriptural, but the scriptural position is quite clear that the Buddha has no longer any role to play as a personalized supernatural being in the life of the world. In Sinhalese Buddhism, prayers (howbeit commemorative) are addressed to images of the Buddha, and in so far as this is done, personalization of the Buddha—specifically as an extremely compassionate being—has occurred on the behavioral level. Yet on the level of conscious thought and ratiocination, the Sinhalese Buddhist would reiterate the scriptural position that the Buddha is no longer "alive" and has no active say in the affairs of mankind, that he cannot "help." Actual behavior often seems to contradict this in various ways:

(1) Though the Buddha cannot help man directly in his this-worldly or other-worldly goals, rituals and prayers addressed to him are considered "good works" (*pin*) bringing other-worldly rewards. The common explanation is that these rewards accrue by virtue of an act of piety, and not by virtue of an appeal to a personalized living Buddha.

(2) Often in times of personal crisis, people appeal to the Buddha for help, but this appeal is rarely articulated in conventional prayer or ritual. Thus as far as the "theory" of Sinhalese Buddhism is concerned, the Buddha is not viewed as alive. But even on the level of theory, the Buddha as a deity occupying a status in the pantheon is important, both from the point of view of the individual worshipper, and from that of the other supernatural beings in the pantheon. In Sinhalese Buddhism the fact of crucial importance in the ideology is that the Buddha was alive in the past—hence the tremendous importance in Sinhalese Buddhism of the Buddha legend and the *jatakas* or "past birth stories" of the Buddha. Buddhist morals and ethics are communicated through these stories, so that the notion of a personalized, omniscient, omnibenevolent being who lived in the past and preached the doctrines is vividly present in the popular imagination. This is in striking contrast to religious behavior in monotheistic religions, where the principal object of worship is an omnipotent, omnibenevolent, living God. In Sinhalese Buddhism, the Buddha is personalized but projected into a past, significant in terms of the present; and this past is brought into line with the present in a

more concrete and immediate fashion in the worship of Buddha relics. Almost every Buddhist *vihare* has a *dagoba* (relic chamber) in which Buddha or *arhat* relics are enshrined, and also a *datu karandu* (relic casket) carried in processions and festivals. This surely is a development to meet the religious needs of both the little and great communities or worshippers and is based on primitive homeopathic magic, on the principle that the part represents the whole. The personality of the Buddha continues to remain incarnated in his relics, and the abstraction of a religious past thus receives concrete realization in the religious present. However, it should be noted that while the personality of the Buddha continues to *live* in his relics, it is immanent and not *alive*. No assistance could therefore be sought from the Buddha personality incarnated in his relics.

Thus, there is good ideological reason for giving the Buddha a presidential status in the pantheon. The positions of all other supernatural beings derive, directly or indirectly from, or are measured against, this initial presidential status of the Buddha. Because of this status and because of the unique conception of deity involved here, it would be best to characterize Buddha as a super deity, the head of a supernatural hierarchy. Below him are the Guardian Deities of Ceylon, who are gods in a conventional sense, for they grant favors, intercede on behalf of humans, help them in worldly affairs, and cause weal or woe in the human world. They are both punitive and benevolent, but mainly the latter. Their punitiveness is, however, a "rational punitiveness"—punishment for transgression or "sins." They punish humans mostly for failure to propitiate them, and sometimes for ethically wrong actions.

Below the Guardian Deities are gods who have power and divine authority over a certain area—e.g. Devol Deiyo, who has special power over the western seaboard, and Devata Bandara, over parts of the Central Province of Ceylon. But these gods are subservient to the Guardian Deities, often considered attendants or ministers of one of the greater deities. Devata Bandara is considered a minister of Kataragama or Skanda and derives his power from the latter. These local gods have attributes and roles similar to those of the chief gods, and they also have lesser gods serving them. Then there are a host of very powerful demons who are completely malevolent and "irrationally punitive"—they capriciously punish people with illness without any cause. Below them are spirits of dead relatives (*pretas*), goblins, and ghosts, who are all spiteful and mean, causing fear in men's hearts.

The supernaturals in the pantheon are manipulated by human beings through ritual. In Sinhalese society, the actual denouement of the rituals sets up a table of precedence which establishes the status of the deity. If a ritual or prayer is directed to a particular deity in the pantheon, the permission (*avasara*) of the deities above him in the hierarchy should first be sought. If one has to propitiate a supernatural occupying a specific position in the pantheon, permission must be obtained from the categories of supernaturals occupying the higher positions; the converse rule, however, does not apply. Thus, in ritual addressed exclusively to the Buddha, no *avasara* from any other deity is required because there are no

statuses above him. For rituals addressed to any of the Guardian Deities, permission from the Buddha (the status immediately above the Guardian Deities) has to be sought. Permission of the Buddha, the Guardian Deities, and lesser deities is required in rituals where demons are propitiated.

The statuses of the deities are further expressed in the ceremony of obeisance and worship adopted towards the deities. The Buddha, as head of the pantheon, is worshipped with the hands on the head or forehead. In rituals in Buddhist temples, vegetarian foods and fruit juices are placed on his altar, and he is honored with incense and flowers. The gods are worshipped with the hands farther below or with the fists clenched and placed against the chest. Since gods are considered noble beings (and even potential Buddhas), they too are offered vegetarian foods, auspicious flowers, and incense. This respectful obeisance is not given the demons at all—they are offered neither auspicious flowers nor incense, but are typically invoked with certain flowers considered inauspicious and with resin, an inferior incense. The food given them typically is *puluta*, or burnt meat, fish, or egg. Often some blood from a chicken is offered to them also. Of the lowest class of supernaturals, the only kind propitiated are *pretas*, who are also never worshipped but are given inferior foods like *puluta* or marijuana and sometimes fecal matter. Hence the kind of offering symbolizes status in the pantheon.

In a Hindu social situation, one may be tempted to relate the foods offered to deities to the dietary prescriptions of the various castes.[12] One could say that the Buddha and the gods reflect a clean caste status and the demons and *pretas* an impure caste status. However, there has been no tradition of prescribed foods in Ceylon relating to the caste hierarchy, even historically. We therefore maintain that these foods have to be seen rather in relation to the Sinhalese Buddhist (and Theravada) principle of *ahimsa* or non-violence, with its logical consequence in a vegetarian dietary. In Ceylon, although meat eating is common, all castes recognize that ideally such an act is a violation of *ahimsa*. Thus, everyone subscribes to an ideal of vegetarianism, but the fulfillment of the ideal does not depend on one's caste affiliations but on one's religious affiliations. Those who are better "Buddhists" tend to be vegetarians, irrespective of their caste statuses, in order to equip themselves better for "salvation." Thus the offerings given the Buddha and gods indicate the high status accorded to them by a community subscribing to an ideal of *ahimsa*. The demons are given "impure" foods, for they are "sinful" like their meat-eating human counterparts. Furthermore, the foods symbolically translate a doctrinal postulate: the gods are beings who have achieved their present status because of "good" done by them in past births; the demons, by contrast, have been "sinful." Traditional Hindu concepts of purity and impurity have been retranslated and given Buddhist ethical meaning.

The hierarchy of supernaturals does not exist as discrete strata, but is linked together to form a well-connected structure. One of the mechanisms by which the supernatural beings are related to one another and to the Buddha at the top of the hierarchy is through the distribution of power and authority or *varan*.

Buddha is the ultimate repository of power and authority possessed by deities and demons; these latter have their powers relegated to them by the Buddha. In other words, these beings have a *varan* or "warrant" from the Buddha to accept sacrifices from humans and bring relief from their woes. The idea of delegated authority and power is surely an attempt made by Sinhalese Buddhism to meet a great-traditional assertion: the demons, by virtue of the supremacy of the law of universal causation (karma), have no real power. Sinhalese Buddhism, like any other institutionalized religion, could not dispense with supernatural beings possessed with power (or capacity to do good or ill), and it meets the doctrinal challenge by stating that these beings do not intrinsically have power but derive it directly or indirectly from the Buddha. Authority thus branches outward from the apex of the pantheon and converges once again at the top.

Sinhalese mythology and the rituals practised in the village often actually dramatize the process by which a "foreign" god or demon is incorporated into the pantheon, through the mechanism of *varan*. Consider, for example, the dramatization of the Kola Sanniya myth, performed in large-scale exorcistic ceremonies in the Sinhalese low country.[13] A shaman wearing the mask of the Kola Sanniya (Antic-Disease Demon) enters the ritual arena. He is supposed to have landed in Ceylon from neighboring India. His path is barred by two men representing two of the Guardian Deities—generally Nata and Pattini. These two deities refuse to permit Kola Sanniya to pass through the *Kadavata* or "city gates" leading into the country. He then tries to bribe the two deities with arrack, plantains, and sweetmeats, performing obscene gestures all the while (not only for "comic relief" but also to dramatize the ludicrous manner in which a person possessed by Kola-Sanniya would behave). Still the gods remain adamant. Then Kola Sanniya brings a *sannasa* or letter of authority, which he pretends to have obtained from the Buddha, and replacing it on his foot, stretches it towards the deities. The gods are now visibly angry at the insult offered to the Buddha by this arrogant gesture with the forged *sannasa*. They firmly guard the "city gates." Kola Sanniya realizes that there is only one way to obtain entry into the island. He goes back and brings a real letter of authority from the Buddha, this time placed on his head, a sign of deference and obeisance. He reads out the *sannasa* which says that the Buddha has ordered Kola Sanniya to refrain from killing humans; instead he has the authority or *varan* of the Buddha to accept sacrifices—those prescribed in the ritual—from humans who, afflicted with disease, seek his aid. The gods open the gates and Kola Sanniya enters Ceylon. This type of drama, often performed in Ceylon, illustrates beautifully the incorporation of a supernatural being into the Sinhalese Buddhist pantheon through the mechanism of *varan*, and the proselytization of "non-Buddhist" supernaturals by accepting the suzerain position of the Buddha in the pantheon.

The structural unity of the pantheon is also reflected in the body of beliefs that explain or justify the respective statuses within the pantheon. The Buddha, as the being who propounded the faith, is at the head of the pantheon; the status of all other beings is explained in terms of the universal law of karma which he

discovered. The gods are beings who enjoy their present status owing to their good karma (*pin*) in past births, whereas the demons and meaner spirits reap the consequences of bad karma (*paw*). The specific status of any supernatural being is connected with his actions performed in previous births. Thus, all deities are viewed as actual or potential Buddhas or Bodisatvas, by virtue of the good done by them. The Guardian Deities and lesser deities like Devata Bandara are therefore addressed in rituals as "Lord who will be future Buddha. . . ." The Bodisatva cult, like *varan*, is also important structurally as a mechanism by which "foreign" deities are incorporated into the pantheon and "legitimated." Thus Vishnu, one of the Trinity in Indian Hindusim, is viewed as a Bodisatva in Sinhalese Buddhism. It must be noted, however, that behaviorally the Bodisatva cult is not of much significance, for any deity grants favors not by virtue of being a Bodisatva but by virtue of being a god. This, incidentally, is probably typical of the attitude to the Bodisatva in countries with a great tradition of Hinayana Buddhism. The Bodisatva is a god who grants favors and not a saviour who has postponed his own salvation in order to save the world, as Mahayana theology would have.

The image of discrete strata linked to certain great or little traditions results in a failure to see the religious tradition of a people as a coherent whole. In terms of historical diffusion, many of the Sinhalese deities and demons have migrated from India. Some of them—like Vishnu and Skanda or "Kataragama"—are deities of supreme importance in Hindu India. Skanda is considered a manifestation of the god Siva, the main deity of South Indian Saivites, and Vishnu is the deity of North Indian Vaisnavites. Along with Brahman, they form the Hindu Trinity. But nothing is gained by viewing these deities as Hindu (Ryan) or as representing a Brahmanic stratum (Kaufman). In Ceylon they have been divested almost entirely of their Hindu attributes; myths linking them with the Buddha have been evolved; they have been pushed from their pedestals as members of a Trinity; they have lost their capacity to save men and can assist them only in their "this-worldly" affairs. They have been proselytized and are no longer Hindu but Sinhalese Buddhist, occupying clearly defined positions in a unified hierarchy of supernatural beings.

Structure of the ideology

If we examine the Sinhalese religious tradition in its ideological dimension, we see once again a unitary structure. It is impossible to examine the whole religious ideology of the Sinhalese in a short essay, but our thesis could be made clear if we examine one aspect of the religious ideology—the Sinhalese theory of causation—in order to show the interdependence of the parts and the structuring of the whole. A theory of causation, as we use it, simply refers to an explanation of how events occur by the operation of supernatural laws. Anthropologists who have studied South Asian Buddhist countries have emphasized the fact that events or human fortunes are explained by concepts

derived from the Theravada theory of karma, chiefly the idea of merit and demerit, according to which responsibility for fortune lies not in our stars but in ourselves. But this one-sided emphasis on karmic concepts, the outcome once again of the anthropologists' preoccupation with a great tradition, oversimplifies the complexity of the ideological structure.

Sinhalese society explains events and their causation in other ways, broadly similar to those of other societies in South Asia. Events or human fortune, for example, are explained as influenced by the action of the nine planets. It is a highly deterministic theory of causality because the constellation of planetary forces under which one is born determines one's life course. Most Sinhalese people have horoscopes cast at birth, and these are anxiously read during crises faced by the individual, so that good fortune or bad can be interpreted as a product of malevolent or beneficent planetary influences. Though one's whole life course is charted in this manner by planetary movements, the good or bad fortunes predicted do not relate to specific or concrete acts of fortune, but only state that such and such a period is bad or good for Ego. For instance, Ego's horoscope may read that during a certain specified period, Ego will be under the malevolent influence of the planet Saturn, but no specific incident that may befall him can be predicted. Anything can happen to Ego during this period of bad luck, the seriousness of his bad fortune depending on the seriousness of the planetary situation. If during this period some specific misfortune does in fact happen to Ego, one can, after the event, retrospectively relate it to the astrological prediction.

However, such an explanation does not exhaust other explanations of the same misfortune—for example in demonological terms. The demonological theory of causality states that adverse fortune may be the result of the action of demons. If Ego falls ill suddenly, this is because he has been possessed by the demon Mahasona, or if Ego's property is lost to him, this is because of sorcery, i.e., the enlisting of demonological aid to cause harm to a person. The same event can also be interpreted within another frame of reference—causality attributed to divine intervention. One can with equal justification say that Ego's illness or loss of property is a result of a violation of taboo, which has brought upon him the wrath of the gods.

Thus it is possible to interpret the same event within three frames of reference—astrological causality, demonological causality, divine causality. Ultimately, however, it is possible to explain the event as a consequence of karma, good or bad, in a past birth. The frames of reference are mutually inclusive. The astrological situation makes it possible for demons or deities to cause good or bad fortune; but the astrological situation is, in turn, dependent on karma. Ego was born under such and such a planetary constellation because of his bad or good karma. Ultimately all acts of fortune can be explained as products of karma. This interdependence of various theories of causality probably represented historically an incorporation of "non-Buddhist" concepts into a "Buddhistic" framework.

Viewed in this light, some aspects of Sinhalese behavior which on the surface seem contradictory are really not so from the actor's viewpoint. Western observers and Buddhist intellectuals have often been puzzled by the addiction to magic and a polytheistic pantheon in societies with a great tradition of Theravada Buddhism, with its devaluation of magic and supernatural beings. But Sinhalese Buddhism cannot be equated with Theravada. Instead it should be seen historically as a fusion and synthesis of beliefs derived from Theravada with other non-Theravada beliefs to form one integrated tradition. Human behavior is intelligible in these societies largely in terms of that tradition. Thus all Buddhist temples in Ceylon have images not only of the Buddha, but also of the deities, often housed in a separate building—the *devala*. An average citizen worships not only at the *vihara*, but also at the *devala*. If, for example, Ego were to meet with a serious illness, he may say, "This is my Karuma" (karma) and immediately consult his horoscope. On the advice of his astrologer, he may perform a special ceremony (*bali*) to ward off bad planetary influence. If this does not lead to a cure, he may hold a ceremony in honor of gods and demons. But this seemingly contradictory behavior can be reconciled and finally explained in karmic terms. In other words, individual identifications and actions have significance only in relation to a single system—Sinhalese Buddhism.

The character of religiosity in South Asian Buddhist societies

The problem of individual identification leads to an ideological paradox characteristic not only of Sinhalese Buddhism, but also of other societies in South Asia with a great tradition of Theravada Buddhism. The average Sinhalese, we have said, acts in terms of a single consistent tradition. The position, however, is never so simple as this, as a further analysis of the religious situation in Ceylon will exemplify. The Sinhalese religious tradition, as we have seen, consists of certain concepts derived from the great tradition, the most important being karma. According to karmic theory, one's fortune is determined by and is alterable only through karmic processes. It is possible by good actions or deeds to alter one's fortunes in this life, and most certainly in the next birth or births; bad deeds may likewise change one's this-worldly or next-worldly status. Responsibility for one's present status or fortune is laid directly on the individual; the capacity to alter such a status or fortune also lies with the individual. Such an ideological position is logically and objectively incompatible with the belief in deities and propitiatory rituals—a reversal of the earlier ideological position, for deities could indeed alter human fortune. The paradox could be stated thus: "If karma is powerful, the gods are not powerful; if the gods are powerful, karma is not powerful." Sinhalese religion, as we have shown, attempts to reconcile karma with the belief in deities, but such a reconciliation is based on a logical contradiction, for both karma and the gods cannot be powerful at the same time.

The existence of the paradox cannot be used to show that the Sinhalese

system is weakly integrated. The paradox is part of the system and integral to it. One could justifiably speak of it as the Sinhalese Buddhist "theodicy," analogous to the Christian paradox of theodicy. In Christianity from the time of Leibnitz, "theodicy" is used in the sense of "the vindication of the Divine Providence or government in view of the existence of evil."[14] The theodicy in this sense arises in monotheistic religions which have to justify logically contradictory attributes of Deity—namely those of omniscience, omnipotence, and omnibenevolence. "Only in a philosophy of religion in which god is recognized as wholly good and evil as truly evil, is the *problem of theodicy* felt in all its existence."[15] (italics mine) Max Weber uses theodicy in a wider sense when he says that "religion provides a theodicy of good fortune for those who are fortunate."[16] Weber is obviously divesting theodicy of its specific roots in monotheism and using it in a wider sense as the problem of suffering in general and the social function of religion as legitimizing suffering and good fortune. It seems justifiable to speak of a theodicy when there is a *problem* about explaining suffering in any religion.

Early Buddhism carried a polemic against a theodicy in ancient Hinduism. The Buddhist position is nicely stated in the *Bhuridatta jataka*:

> He who has eyes can see the sickening sight;
> Why does not Brahma set his creatures right?
> If his wide powers no limits can restrain,
> Why is his hand so rarely spread to bless?
> Why are his creatures all condemned to pain?
> Why does he not to all give happiness?
> Why triumphs falsehood? truth and justice fail?
> I count you Brahma, one the unjust among,
> Who made the world in which to shelter wrong?[17]

The problem of theodicy here, on the one hand, is close to the Christian one; but on the other, there is, more fundamentally, a deeper theodicy arising from logically incompatible justification of fortune, such as an impersonal theory of karma and a personal deity (Brahma). This theodicy is resolved in ancient Buddhism, which rejected the latter but retained karma as a mono-causal theory of suffering. However, the theodicy "reappears" in popular Buddhism, where one finds both karma and contra-karma theories of suffering and fortune. For the Buddhist masses, rooted as they are in the affairs of the world, the theodicy is not a logical or spiritual problem. But for those who are religiously sophisticated, more aware of the doctrinal position than others, the theodicy remains largely unresolved unless a "rejection" of one set of beliefs for the other takes place—in which case, one has to believe either in karma or in the gods.

If we are right, this is crucial to the whole problem of individual identification, not only in respect to Sinhalese religion but, we maintain, in respect to other peasant religious traditions in this area, e.g., the Malay-Moslem religious

tradition. In these examples, the existence of a religious great tradition—Buddhist or Muslim—is an empirical fact. A great community of monks and scholars is the visible representative of that great tradition. The large mass of people subscribe ideally to that great tradition; they therefore designate themselves as Buddhists or Moslems. Behaviorally viewed, however, the masses pay only lip service to the great tradition in its entirety; their real religious tradition is a unified system which we call *x* or *y* religion, though concepts derived from the great tradition form an important part of the system. But this unitary system often rests on a theodicy such as simultaneous subscription to karma and to intercessionary deities, or monotheistic worship of Allah and a polytheistic pantheon. There are many ways of explaining the existence of such paradoxes.

Historical explanation

Such an explanation would state that the paradox is a result of the synthesis or fusion of pre-existing beliefs or later diffused beliefs from the great tradition. These beliefs are contradictory to the great tradition, but from the point of view of the people, they are resolved and explained in terms of a single tradition.

Motivational (and functional) explanation

The motivational explanation would state why beliefs that seem contradictory continue to be believed in: there is a strong human need for these beliefs. For example, however much doctrinal Buddhism devalues magic and the gods and divests them of power, universal human motives require the existence of these phenomena.[18] Similarly, the addiction to a polytheistic pantheon and shamanism serve the Malays better motivationally—in view of their cultural tradition and personality needs—than an exclusive subscription to monotheism. The functionalist point of view would state that beliefs comprising a given religion have important functions for the social structure and personality of the people in these societies, and thus they continue to survive.

These explanations are valid and explain why paradoxes of the type we have described exist in the religious tradition of the masses. However, in every society there are religious "virtuosos" who by personal preference and training have rejected the religion of the masses and have aligned themselves with the great tradition. For these people, more interested in salvation than the common herd, the religious paradox has to be resolved in a logical rejection of the gods. In Sinhalese society, this type of peasant religious virtuoso is called an *upasaka*.

The *upasaka* is identified and designated thus because he regularly observes *sil* or meditation on holy days and tries as much as possible to concern himself with other-worldly goals and activities. Since he is concerned with salvation, he is not satisfied with the array of concepts used by the common man; he explores them further. This explanation takes him to the doctrines and texts of the great tradition. In Sinhalese society, the *upasaka* is a person whose understanding of

the great tradition is derived mainly from less difficult and abstruse commentarial, exegetical, and "popular" texts. The ideal *upasaka* is a person who has seen the logical contradiction involved in the Sinhalese Buddhist paradox; he has rejected the gods. In a sense, any person who is seriously interested in salvation must see the paradox, for it is an obstacle to salvation. It is also not surprising that *upasaka* are almost always old people with grown-up children—people with little or no social responsibilities and little stake in the material world. As such, they have very little psychological need for the gods; their rejection is not difficult. But the *upasaka*, like the Buddhist scriptures, has not denied the existence of supernatural beings; he has only divested them of power. Moreover, rejection of the deities is followed by a greater affirmation, an affirmation of the great tradition.

Throughout our essay, we have drawn a distinction between the little tradition (Sinhalese Buddhism) and the great tradition (Theravada Buddhism). Other writers have drawn similar distinctions. Slater, for example, says that there are two types of Buddhism in Burma—the Buddhism of the monastery and the Buddhism of the village.[19] But the distance between monk and peasant is not radically different from similar distinctions in other religious traditions. Moreover, continues Slater, there are different grades of monks in Burma; not every man in a yellow robe is fully ordained and not every ordained monk is a scholar. We find that the distinction drawn by Slater between village and monkish Buddhism is close to our distinction between Sinhalese Buddhism and Theravada Buddhism (the great tradition). The distinctions between grades of monks can however be of an infinite variety. It is true that a great many monks are hardly scholars or even pious people, but the monk by definition is expected to be both scholarly and pious. The great tradition has conceptual significance only in relation to the ideal monk in his expected roles rather than his actual roles. By definition, the monk is a person who has aligned himself with the great tradition, who is the representative of that tradition, and whose primary pursuit is that of salvation. He has perforce to deny the power of the deities; the religious paradox of the masses should not exist for him. Thus the monk rarely or never participates in the rituals of the lower cults, with their purely material rewards. The polar opposite of the monk is the shaman, involved in the gross material aspirations of the masses.

But the two religious traditions do not exist in a vacuum. The religion of the monk and that of the masses are linked by a common set of meanings pertaining to "salvation"—a common "salvation idiom." In Sinhalese Buddhism, this salvation idiom, derived historically from the great tradition, is largely related to the other-worldly goals or orientations of the people, whereas the rest of the system has to do with the quest for material objectives or this-worldly goals. In other words, the popular traditions in these countries can be dichotomized in terms of the religious goals or orientations of the masses. We can see this clearly in the case of Sinhalese religion. A Sinhalese Buddhist when he wishes to define his present condition in terms of fundamental or ultimate values—values

pertaining to man's salvation—does so through the concepts derived from Theravada Buddhism. A whole battery of concepts—karma; *pin* ("good deeds"); *paw* ("bad deeds"); *dana* ("giving"); *sila* ("virtue"); *rahat* ("arhatship"); *nirvana* ("final salvation"); heaven and hell; rebirth—are used for this purpose. Contrasted with this, sorcery, astrology, and so on are used only to explain factors pertaining to the mundane world. A Sinhalese Buddhist rarely asks the Buddha for worldly goods; this he asks only of the gods. He seeks the Buddhist monk—the representative of the great tradition—to receive spiritual solace; for practical material interests, he seeks the assistance of the specialists of the lower cults of astrology and demonology who have no say over salvation. The division of labor and the allocation of crucial religious roles are based on this fundamental differentiation of the two aspects of the system—the Buddhist monk assisting humans to achieve their other-worldly goals, and the priests of the lower cults acting as intermediaries between men and gods and other supernatural beings presiding over the affairs of their gross-material world.

The common salvation idiom is the ideological channel which facilitates movement from one tradition to the other. For instance, the monk could, through these shared meanings, influence the religiously receptive to reject the mundane world for the supra-mundane; and any peasant who is more interested than others in problems of salvation could further explore the salvation idiom, which would take him closer to the great tradition. Since the great tradition is a religion of renunciation, the movement from one tradition to another is largely a movement away from the social structure (or towards it). The peasant who has become an *upasaka* is only partly connected with the social structure; and if he decides to become a monk or novice, he moves out of the social structure for good. Similarly, the monk who has given up his robes has moved back into the social structure. Each stage is theoretically correlated to degrees of renunciation; this, in turn, is related to the degree of alignment with the great tradition.

These culturally defined stages of withdrawal from the social structure do not imply orderly progress from one end of a continuum to another in stages. One could become a monk or novice without ever having been an *upasaka*; conversely, any religious virtuoso could revert at any time to the status of peasant. Indeed the *upasaka* rarely becomes a monk. He is a person who, while having some stake in the peasant society, has resolved to discipline himself for the goal of salvation. The novice or the monk by contrast has theoretically *no* involvement in the peasant social structure. His renunciation is symbolized by his patched robe, begging bowl, and shaven head.

The salvation idiom not only links the great tradition with peasant religion, but also links the peasant cultures themselves; for the peasant groups within a single civilization and sharing a great tradition may have many cultural differences among themselves. This can once again be clearly illustrated from Sinhalese data. In Ceylon, a peasant village in the isolated jungles of the Central Hills may believe in many gods and practice many rituals unheard of in a village along the western seacoast, and vice-versa. Yet both groups share the salvation

idiom from the great tradition. This is not simply an objective cultural phenomenon observed by the anthropologist; from the subjective point of view of the villagers too, it is of great importance. For irrespective of other cultural differences, Sinhalese people from all parts of the country can meet and feel a sense of "belongingness" as a result of sharing in the same salvation tradition. This sense of belongingness receives concrete sociological expression in the great centers of Buddhist pilgrimage in Ceylon.[20]

This line of reasoning is important for our study of South Asian Buddhist countries. The salvation idiom is the same, more or less, for all South Asian Buddhist countries, but this has different implications for the little community and the greater community. The little communities in the various South Asian countries phrase their salvation idiom in different languages; there is more common ground between the greater communities of these areas, since the majority of the great traditional doctrinal and commentarial texts are written in Pali. All the great communities in these countries, in spite of sectarian and cultural differences, share a common great tradition of Theravada Buddhism embodied mostly in Pali texts. This makes ideological intercourse among the greater communities of different countries a practical possibility. Historically, this is clearly seen in the various "missions" sent by Burma and Thailand to Ceylon, to revive the ordination at periods when Buddhism had declined in the country. Thus today the two major Buddhist sects in Ceylon are the Siamese (Sian Nikaya) and Burmese chapters (Ramanna Nikaya). The common great tradition is also the ideological foundation for a modern "ecumenical" trend in Buddhism in these countries.

The existence of a common salvation idiom among the masses in countries with a great tradition of Theravada Buddhism suggests a fundamental characteristic of mass religiosity in these areas, namely that the concepts derived from the great tradition are not a veneer or crust thinly formed over a mass of "non-Buddhistic concepts" which constitute the real religion of the people, as some Western and native intellectuals would suppose. The Theravada concepts and meanings constitute the frame of reference by which the deeper and basic facts of life and death are understood and within which are contained all the values of the people, whether they have the sanction of orthodoxy or not. The attitude to life, world view, and ethos is "Buddhist," i.e., life is seen, felt, and experienced in terms of Theravada meanings and concepts. It is outside the scope of this paper to discuss "Buddhist Ethos"; it is sufficient to reiterate Slater's conclusion that it is "Buddhism" and not "animism" that constitutes the governing ethos of the people.[21]

Summary

Our central assumption in the foregoing analysis is that cultures are integrated; therefore, the view that peasant cultures are compounded of empirically and conceptually separable great and little traditions is unfounded. We recognize the

utility of the terms "great tradition" and "great community"; these abstractions are useful for describing the intellectual thought and interests of civilizations, and groups of individuals who promote and further these interests. The little tradition by contrast, we agree with Dumont and Pocock, is the *whole* culture of the little community or peasant society. Peasant cultures are "wholes"; but we agree with Redfield that they are not isolates. Peasant cultures or little traditions are linked with the great tradition through a common cultural idiom, which establishes channels of communication between the two traditions and sets up standards of mutual reference and influence. There are common sets of concepts and a common terminology. Though the substantive content of the terminology and the emphases given may be different in each tradition, there is a core of shared meanings associated with the terminology which facilitates movement between the two traditions. This is because the common idiom is derived historically from a great tradition, though refashioned to fit the peasant world view. The common idiom not only links the little tradition with the great, but also links the little traditions with one another. This represents an important aspect of the cultural unity of a civilization: a shared commonality of meanings which define the central values of the people and constitute their governing ethos.

Notes

1 This is a revised version of a paper originally read at the Tenth Pacific Science Congress held in Honolulu, Hawaii, August 1961 in a seminar on the *Sociology of Buddhism*, organized by E. M. Mendelson of the London School of Oriental and African Studies. This article is based on data gathered in the field in Ceylon at various periods during 1958–61. I thank the Asia Foundation in Ceylon for generous financial assistance which made field work possible, and Mr. Louis Lazaroff, Asia Foundation representative in Ceylon, for much personal encouragement.
2 Robert Redfield, *Peasant Society and Culture* (University of Chicago Press, 1956), p. 72.
3 Louis Dumont and D. F. Pocock, *Contributions to Indian Sociology*, No. I (Paris: Mouton and Co., 1957), pp. 39–40.
4 Redfield, p. 68.
5 Bryce Ryan, *Sinhalese Village* (University of Miami Press, 1958), pp. 90, 106.
6 H. K. Kaufman, *Bangkhand, A Community Study in Thailand* (Monographs of the Association for Asian Studies) (New York: J. J. Augustin), pp. 183, 194, 196.
7 Kaufman, p. 203.
8 John E. deYoung, *Village Life in Modern Thailand* (Berkeley: University of California Press, 1955), p. 110.
9 R. L. Slater, *Paradox and Nirvana, a Study of Religious Ultimates with Special Reference to Burmese Buddhism* (Chicago: University of Chicago Press, 1951), p. 13.
10 deYoung, p. 110.
11 This assumes of course that culture is in some sense "integrated" and amenable to systemic analysis.
12 See M. N. Srinivas, *Religion and Society among the Coorgs of South India* (Oxford University Press, 1952), Chapter 7 for a sophisticated analysis of ritual on these lines.
13 See Paul Wirz, *Exorcism and the Art of Healing in Ceylon* (Leiden, 1954), pp. 42–64, for a detailed description of this ceremony.

14 James Hastings, ed., *Encyclopaedia of Religion and Ethics* (New York: Scribner's, 1961), article on theodicy.
15 loc. cit.
16 Max Weber, "Social Psychology of the World Religions," in *From Max Weber*, ed., Hans Gerth and C. Wright Mills (New York: Oxford University Press, 1958), p. 271.
17 *Jataka Tales*, ed., E. B. Crowell (London: Luzac & Co. for Pali Text Society, 1957), Vol. VI, p. 110.
18 This position is taken by Weber, Max Weber, *The Religion of India*, trans., Hans Gerth and Don Martindale (Glencoe: Free Press, 1958), Chapters 6 and 7.
19 Slater, pp. 26–27.
20 We have for obvious reasons emphasized the idiom of salvation, though this is not the only channel of communication and mutual reference between the two traditions. It is often through this type of shared idiom that the great tradition influences the little and, it should be emphasized, by which the little tradition influences the great. This kind of cultural idiom pertains to other cultural forms like astrology, scholastic in the great tradition, ritualistic and magical in the little; or medicine, which is philosophical and empirical in the great tradition, but heavily magical in the little.
21 Slater, pp. 112–115.

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DHAMMA IN DISPUTE

The interactions of religion and law in Thailand

Frank E. Reynolds

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This article explores the ways in which law and religion overlap and interact in Thailand. The imaginative-symbolic dimensions of Thai law and religion share many common elements, which have been apparent in the discourse of national politics throughout the 20th century and in the discourse associated with conflict, dissent, and reform in contemporary Thailand. With the emergence of a constitutional monarchy in the 1930s, traditional Buddhist concepts of cosmic law and religion were fused with new concepts of political administration and legal authority. A new "civic religion" emerged, resting on the threefold formula of nation, religion, and kingship. This evolving civic religious tradition has provided a framework for both the imaginative-symbolic and the more practical, action-oriented discourses that characterize modern Thai legal culture.

The interplay between religion and law is an extremely complex topic that has received very little concentrated attention either from scholars who focus on religious studies or from scholars who focus on legal studies. To be sure, some scholarship in religious studies has dealt with matters of law. Some scholarship in the area of law has taken certain religious dimensions seriously into account. And a few anthropological studies have broken middle ground in the study of certain kinds of cultures. To my knowledge, however, no work provides a comprehensive theoretical orientation that is at all adequate, nor is there any broadly gauged interpretive model that can serve as a reliable guide.

Among the relevant theoretical approaches with which I am acquainted, the most suggestive one has been put forward by Clifford Geertz. Picking up on the notion of "life worlds" developed by Alfred Schutz, Geertz has developed his own understanding of culture and cultural systems. From Geertz's perspective, human cultures are highly complex constructions that are constituted by the

coexisting presence of a variety of closely correlated cultural systems. Within this broader view, he has set forth several very useful notions that are relevant to the study of religion and law. He has written an influential essay spelling out his notion of "religion as a cultural system" (Geertz 1973) and—without using the terminology in an explicit way—has developed in another essay a notion of law as a cultural system (Geertz 1983).

I do not consider Geertz's characterizations of religion and law sufficiently nuanced to establish an adequate framework for dealing with the highly complex interactions between the two that have developed in Southeast Asia—in Thailand in particular. In the essays "Religion as a Cultural System" and "Local Knowledge: Fact and Law in Comparative Perspective" he does, however, highlight several points that will help in formulating issues central for our discussion.[1]

The first useful point that Geertz makes is that in specific cultural contexts religion is best understood as a coherent cultural system that involves an imaginative-symbolic discourse on the one hand and a correlated discourse about human action on the other. Geertz identifies the imaginative-symbolic discourse with expressions through which the world (in its most extended and ultimate sense) is socially constructed; and he identifies the discourse about human action with the articulation of a program of human conduct that generates a particular kind of ethos. From Geertz's point of view, the imaginative-symbolic discourse and the more pragmatic, action-oriented modes of religious discourse are mutually reflexive aspects of a single cultural system. Through an ongoing process of mutual interaction and confirmation, these two modes of discourse constitute a particular religious culture characterized by its own very distinctive patterns of religious sensibility.

The second useful point from Geertz's essays is that law is also a kind of cultural system and that it can be understood in parallel terms. There is an imaginative-symbolic discourse through which the legal community constitutes what Geertz calls the basic if/then structure of existence. In this same legal context there is a correlated discourse about human action (a discourse that deals with what he calls the as/therefore course of experience) that establishes the legal forms and guides legal decisions. Geertz contends that any viable legal system must maintain a mutually reflexive connection between these two levels of discourse such that they "seem but depth and surface versions of the same thing" (1983:175). He argues that when both levels of legal discourse are operative and reflexively correlated, a particular local pattern of legal sensibility will be continually constituted and confirmed.

The third useful point is clearly implied but—perhaps because he has discussed the two kinds of cultural systems in essays addressed to two different audiences—is never explicitly stated. He presumes (primarily in "Local Knowledge") that in a great many cases the kind of cultural system he characterizes as religious and the kind he characterizes as legal overlap and interact in different and complicated ways. In many cultural contexts the imaginative-symbolic discourses of religion through which a basic worldview is constituted have an

extensive overlap with the imaginative-symbolic discourses of law through which the if/then structures of existence are identified and confirmed. So, too, in many such contexts the religious discourses through which a broad-ranging program of human conduct is set forth have an extensive overlap with the legal discourses through which legal procedures and decisions are continually being established and legitimated.

The fourth useful point is Geertz's strong emphasis on the radical pluralism that in most contemporary situations—and certainly in most nation-states in Southeast Asia—has become a central reality. Since Geertz raises this issue in his essay on law, he focuses his attention primarily on what he calls the florescence of legal pluralism in the modern world. To this I would add (as I believe Geertz himself would do if pressed) that the equally pervasive realities of religious pluralism must also be taken into account.

We can now turn to the specific case of religion and law in Thailand. To provide a historical baseline, I will begin with a cursory account of the traditional pattern of Thai Buddhist law, a pattern that remained in place until the later decades of the 19th century.

The premodern pattern

In the traditional Thai context, religion and law were not differentiated in any significant way. *Dhamma* (the Truth, or Cosmic Law, discovered and taught by the Buddha) was the center of a set of imaginative-symbolic discourses that constituted Buddhist culture. Within this Buddhist culture, Dhamma was the central and pervasive norm informing a set of discourses that provided both the worldview and the ethos that constituted Buddhist religion. The same Dhamma was also the central and pervasive norm in the set of discourses that formulated the structures of existence and the legal procedures and decisions that constituted Buddhist law.[2] The relevant distinction in the premodern Thai Buddhist context is not between religion and law but between the two wheels of Dhamma.[3] At the textual level, the two wheels of Dhamma refer to two types of law that are both encompassed within the broader framework of Buddhist religion. The first is the ecclesiastical law that is embedded in the Vinaya (one of the Three Baskets of the Tipitika, which purports to contain the teaching of the Buddha himself) and the Vinaya commentaries. This ecclesiastical law, like other forms of legal culture, includes both an imaginative-symbolic dimension and a more programmatic, action-oriented dimension. The imaginative-symbolic dimension is articulated in a set of Dhamma-based discourses that focus on the Vinaya as a soteriological discipline. The more pragmatic, programmatic dimension is constituted by a set of Dhamma-based discourses that regulate the day-to-day operation of the Buddhist order and structure the activities of individual monks.[4]

The second type of law is the secular law (I use the term *secular* in its original sense: to refer to a nonmonastic, socially situated dimension of religion), which developed in mainland Southeast Asia under the rubric of Dhammathat or

Dhamma commentary. This Dhamma is constituted by a set of Dhamma-based discourses that include both an imaginative-symbolic dimension and more pragmatic, programmatic dimension. The imaginative-symbolic dimension is to the fore in the myth of the discovery of the Dhammathat in primordial times—a myth that introduces most of the Dhammathat texts, including the *Law of the Three Seals*, which was used in the early Bangkok period (after 1803).[5] The more pragmatic, programmatic aspects are included in the main body of the text, in which a wide-ranging legal code is inscribed.[6]

At a more communal level, the two wheels of Dhamma refer to the order of monks on the one hand and to Buddhist kingship on the other. According to the classical ideal associated with this formulation (an ideal maintained even though, in practice, it was often subverted, bypassed, or ignored), monks and king worked in tandem to assure that both the ecclesiastical law and the secular law were properly embodied and enforced. The wisest of the monks (along with, in the Thai case, a contingent of court Brahmins who had been encompassed within the Buddhist tradition) were expected to serve as advisers to the king in his role as the embodiment and enforcer of the secular law. At the same time, the king was expected to support, through the use of royal force if necessary, the efforts of the most accomplished and disciplined monks to ensure that the monastic community maintained its adherence to the ecclesiastical laws encoded in the canonical Vinaya and the Vinaya tradition that was based on it.[7]

Finally, it is important to recognize that the monastic-Vinaya tradition and the royal-Dhammathat tradition were, in many situations, supplemented by local traditions and customs. At the basic level of the Sangha (the Buddhist monastic order), these traditions and customs were sometimes associated with diverging activities that had roots within Buddhism itself. In other cases they derived from indigenous sources that had little if any Buddhist content. In the secular law, many of the local traditions and customs that supplemented or deviated from the code enshrined in the Dhammathat were themselves deeply influenced by Buddhist sensibilities that had penetrated society as a whole.[8] In other cases, however, they included elements that were quite unconnected with specifically Buddhist modes of belief and practice.

The nation-building process

During the 19th and 20th centuries the Bangkok kingdom has undergone and generated a radical transformation that has affected every aspect of the religious and social life of the peoples who populate the area presently included within its borders. To understand the emergent relations between religion and law, it is important to recognize three closely related factors that have played a central role in the nation-building process.

The first is the Buddhist reform movement that was launched in the middle decades of the 19th century by Prince Mongkut, a member of the royal family who was a monk at the time and later became king. To be sure, this reform

movement had a number of precedents, extending far back into Buddhist history. Recent research (including work that Charles Hallisey and I are doing on the *Sangitiyavamsa*, composed and compiled during the reign of Rama I) has revealed, moreover, that some of the "modernist" emphases characteristic of the mid-19th-century reform movement were prefigured in ideas expressed during the very early years of the Bangkok period. All this having been said, it is still true that the reform movement initiated by Mongkut in the 1830s symbolized, embodied, and expedited the development of a new Buddhist orientation that was deeply influenced by modernist ideas and ideals.

The reform movement embraced and encouraged innovations in theory and practice. Here, several points are relevant to our present concerns. For example, Mongkut and those who shared his perspective reinterpreted the central Buddhist notion of Dhamma such that many aspects of the classical Theravada tradition were called into question. Mongkut and his fellow modernists sought to identify true Buddhism with a certain rationalistic strain that they discerned within the early Buddhist texts and—on that basis—to reconstitute the tradition so that it would not be in conflict with the new ideas and institutions being absorbed from the West.

In the ecclesiastical law, the reforms that Mongkut advocated and institutionalized in the monastic *nikaya* (sect) that he founded were relatively traditional. They involved a "return" to the supposedly authentic Vinaya tradition of the Mon Sangha (the Mon had dominated areas of southern Burma and central Thailand before the Burmese and Thai). This "return," however, included a much more rationalistic interpretation of the imaginative-symbolic dimension of Vinaya discourse and a much stricter understanding and application of the code of behavior set forth in the Vinaya texts. It also involved an attempt to radically reduce the influence of local traditions and customs in the reformed sect itself, and to discredit the local traditions and customs that continued to be observed by other members of the Sangha.

In the secular law, the reformed tradition had relatively little impact at the outset, even after Mongkut left the monastic order and became king. But the more rationalistic interpretation of the Dhamma that Mongkut and other like-minded Buddhists encouraged did in fact prepare the way for truly revolutionary developments in the secular law. The reformists, through their more rationalistic interpretation of the Dhamma, self-consciously undermined the credibility of the traditional cosmological and cosmogonic imagery. In so doing, they undermined the credibility of the structures of existence that had been a necessary and integral component of Buddhist secular law.

The second major factor that affected the new relations between religion and the law that developed during modernization in Thailand was the introduction of a radically new system of secular law. During the reign of King Chulalongkorn (Mongkut's son and successor, who ruled from 1868 to 1910) the Dhammathat tradition—already weakened by the attack on the credibility of the imaginative-symbolic discourse integral to it—was replaced by a system of modern law

adapted from Western models. The process through which this radical transformation was accomplished has been discussed in detail by David Engel in an excellent monograph, *Law and Kingship in Thailand during the Reign of King Chulalongkorn* (1975). Engel describes the crisis generated in the latter decades of the 19th century by the penetration of Western colonial powers, and the corresponding need to establish a governmental structure that would enable the Thai to retain their independence. This required the establishment of legal and administrative forms that would be recognized as legitimate by the colonial powers, forms that would also facilitate the development of the old Thai kingdom into a modern nation-state.

Engel focuses on the central role played by King Chulalongkorn and a small group of court supporters in implementing the radical transformation in Thai secular law. He describes how the traditional Thai pattern of sacral kingship provided Chulalongkorn with the authority to implement his objectives effectively. At the same time, he points out that the newly established forms of modern law were based on notions of the structure of existence (e.g., the principle of human rights and the principle of equality) that were in direct conflict with the notions of authority and hierarchy on which the sacral authority of Thai kings had traditionally been based. The contradiction between traditional Thai conceptions of kingship and the ideals embedded in the modern system of law established by Chulalongkorn led (in conjunction with a variety of other factors) to a crucial turning point in the development of modern secular law in Thailand. The key event was the coup d'état of 1932, which resulted in a forced transition from a so-called absolute monarchy to a largely symbolic and ceremonial one. The coup also resulted in the establishment of a modern-style constitution designed to provide the basis for a more democratic social and legal order.

The third major factor that has affected the relations between religion and law in modern Thailand has been the expansion and extension of the authority exercised by the Thai government in Bangkok. In the early stages, this expansion and extension met with a great deal of active resistance, including religious resistance. Obvious examples are the Phi Bun movements, which both expressed and generated violent resistance and rebellion in the northeastern and northern sections of the country.[9] Other local leaders and peoples adopted more subtle strategies of noncooperation.

Expanding the kingdom involved the incorporation of new territories, including areas where differing religious and legal traditions were practiced by significant portions of the populace. Here, the two primary examples are the expansions to the south and to the north, both of which occurred during the 19th century. With expansion to the south came incorporation of areas on the Malay Peninsula, where Islam was the dominant religion and Islamic law was well established. With expansion to the north came incorporation of the territory of the old Chiang Mai kingdom, in which a rather different form of Theravada Buddhism was practiced and a rather different kind of religious sensibility was embedded in the culture. The expansion to the north also brought incorporation

of the northern hill country, which was populated by a number of different tribal groups, each with a distinctive religiolegal tradition.

A closely related process involved activities and mechanisms whereby the control of the central government was extended into levels of society that had previously been allowed to operate with a minimum of central government interference. Extension was, in part, an aspect of the transition from a galactic to a radial polity, to use Stanley Tambiah's (1976) terms. In the older, galactic polity there were a variety of hierarchically ordered centers of relatively independent political and legal authority distributed throughout the kingdom. In the newer, radial polity the political and legal authority of the government located in Bangkok was extended directly from the center to each local area.

In the new radial polity, the modern legal system that was established in Bangkok has been brought into direct contact with the lives of ordinary people throughout the country. Direct contact has produced an ongoing interaction between modern legal rules and procedures on the one hand and local traditions and customs on the other. The particulars of the interaction in the Chiang Mai area have been studied by David Engel (1976; see also Turton 1976), who devotes considerable attention to the religious aspects of the local culture. Engel has highlighted the importance of Buddhist-influenced notions of human personality, Buddhist-influenced notions of injury, and the mediating activities of Buddhist monks, as well as the significance of local traditions of witchcraft, spirit cults, and decision by ordeal.

Civic religion and legal culture

In the concluding section of "Local Knowledge," Geertz takes up the question of legal pluralism, especially as it presents itself in so-called Third World countries (a category that he uses to encompass all Southeast Asian nations). In his usual vivid style, Geertz points to the variety of legal cultures and institutions within these countries. He emphasizes what he considers to be the fundamental incommensurability of many of these legal cultures and institutions, and he suggests that what is needed is not so much a struggle for consensus (which he believes is beyond the realm of possibility) as the cultivation of an "abnormal" or "nonstandard" discourse to facilitate a less than violent interaction across the plethora of diverging rationalities.[10]

In Thailand and other countries in Southeast Asia, much evidence supports Geertz's view on the necessity of depending more or less exclusively on the abnormal discourse he commends. In Thailand—and, I suspect, in other countries as well—there are other aspects of the situation he fails to consider. My major contention is that as an integral part of modernization, a new, steadily evolving "civic religion" has developed, a civic religion[11] that has provided a normal discourse in terms of which many issues—including issues of legal principle, as well as those of form and procedure—have been and are being contested, decided (sometimes peacefully, sometimes forcefully), and contested once again.

Civic religion has been present in undifferentiated form in the history of many of the religiopolitical orders generated in the great civilizations of the premodern world. Certainly there are many examples of undifferentiated civic religious traditions in the Buddhist-oriented civilization of premodern South and Southeast Asia beginning from the time of King Asoka (r. ca. 270–232 B.C.) of India down to the 19th century. Many scholars have noted, for instance, that King Asoka used the notion of Dhamma to encompass within its range not only Buddhist meanings but also meanings associated with many other religiosocial traditions in his realm. Similarly, many of the kings of premodern Sri Lanka and Southeast Asian realms sponsored civic religions that, though not clearly differentiated from Buddhism, encompassed many Hindu and local components as well.

In Thailand, during the late 19th and early 20th centuries, a new and more clearly differentiated form of Buddhist-oriented civic religion developed as a part of the modernizing process. Like its Western precursors, it was intimately associated with the emergence of a modern nation-state.[12] The process was well under way in the final decades of the 19th century. During the reign of King Chulalongkorn the notion of the modern nation-state was brought to the fore and became a focal point—along with an updated version of the two wheels of Dhamma—of the discourse that was beginning to constitute the new civic religious tradition.

Chulalongkorn was succeeded by his son, Wachirawut (r. 1910–26), often called the father of modern Thai nationalism. Wachirawut set forth and popularized the threefold formula of Chat (nation), Satsana (religion), and Mahakesat (king or kingship) that has provided, from that time forward, the basic symbolic structure of Thai civic religion. In the Wachirawut formulation, each of the three closely correlated and interacting components had its more imaginative-symbolic and its more pragmatic, action-oriented dimensions.

The Chat was seen in terms of the people, united and governed by a modern system of law. The Satsana was identified with Buddhism, including both the monastic tradition of law and practice and the lay-oriented teachings and practices that contributed to the well-being of society as a whole. The Mahakesat (king) was taken to be the father of the Thai people; he was the symbolic locus of political authority in general and of secular legal authority in particular.

During the early decades of the 20th century, the meaning of both the imaginative-symbolic and the more pragmatic, action-oriented dimensions of these three foci were hotly debated by those who advocated a more traditionalist interpretation, and by their opponents who advocated a more modernist interpretation. In the early 1930s the modernists mounted a successful coup d'état that initiated a new era in modern Thai history and set in motion a new version of the civic religious tradition.

In the new formulation, the importance of the Chat was significantly increased, the notion of Satsana was extended to include not only Buddhism but also other religions with a significant Thai constituency, and Mahakesat was

understood in a new way that separated the symbolic role and functions of kingship (which were reaffirmed) from the exercise of day-to-day political power and legal authority (which was virtually eliminated). Furthermore, a fourth element was added to the symbolic trinity—the Ratthathammanun (constitution).[13] The inclusion of this fourth element affirmed the centrality of a modern democratic political and legal system and set forth some of the principles that should structure the relations and interactions among the Chat, the Satsana, and the Mahakesat.

Following the coup of 1932 the new formulation of the Thai tradition of civic religion (including both its imaginative-symbolic and its more programmatic, practice-oriented dimensions) continued to provide a primary locus for debates on many of the most basic political and legal issues that the Thai nation confronted. In very general terms, the notion of Chat has increased in significance, receiving a more chauvinistic coloration at times and a more encompassing and liberal connotation at other times. The Satsana has been given a more exclusively Buddhist significance in some situations and a more ecumenical, pluralistic interpretation in others. And the Mahakesat has ranged in importance from relatively peripheral in the earlier period, when the reigning monarchs were less than imposing figures, to very significant indeed (a situation that has pertained since the early 1960s, when young Phummiphon Adulyadej, who had ascended to the throne a few years earlier, began to gain strong political and popular support). But perhaps the most interesting issues have concerned the Ratthathammanun. Among those who have pressed for democratic values and procedures, the Ratthathammanun continues to hold a place of honor in the civic religious tradition. Among those who have advocated a more authoritarian mode of political and legal practice, the triad of Chat, Satsana, and Mahakesat has remained a triad.

To illustrate my contention that the evolving civic religious tradition has provided a primary basis and locus for the imaginative-symbolic and practical, action-oriented discourses that have generated a distinctive legal sensibility in Thailand, I turn to the rhetoric used in the ongoing legal controversy over the environmental activism and legal problems of a Buddhist monk named Phra Pracak.

In early 1991, Phra Pracak—in the course of his efforts to aid villagers and protect forest reserves in northeastern Thailand—violated certain laws, resulting in his arrest and imprisonment and in threats of prosecution by government authorities. Though public pressure soon led to his release from jail, the case against him is (so far as I am aware) still pending. The situation has generated a heated national debate on a number of issues of policy and legality. What is of interest to us here is the rhetoric used as the controversy has developed.

The notions of Chat, Satsana, and Mahakesat legitimize the political and legal forces marshaled against Phra Pracak. But the same symbols are being used by Phra Pracak's supporters to defend his actions and to criticize the actions of the powers that be. Thus Phra Pracak's supporters have appealed to a broadly

gauged (one might say suprapolitical and supralegal) notion of the Chat to justify his actions. They have claimed that Phra Prajak is the one who is truly serving the well-being of the Chat by addressing the needs of the village people and by protecting the national environment. On this basis, so they argue, Phra Pracak's actions are right, the actions of the government authorities are wrong, and the legal prosecution should be dropped.

The royal focus of the civic religious tradition has also played an important role in the rhetoric on both sides. At a certain point, the entrepreneurs engaged in the police-supported project that Phra Pracak opposed claimed they were acting at the behest of the king; they were, after all, carrying forward the project of economic development that the king has strongly advocated. This rhetorical foray was immediately countered by Kukrit Pramoj, a journalist known for his royal connections and his long-term role as exponent and interpreter of Thai civic religion. Writing in his widely distributed editorial column, Kukrit asserted that the entrepreneurs were totally wrong in their claim to have a royal mandate because—as everyone should know—the king would never support actions that are against the best interests of the nation.

Finally, Kukrit and other defenders of Phra Pracak have been adamant and persistent in their appeal to the significance and the content of the Satsana. They have contended that the Dhamma (law encompassing both sacred law and secular law) is in this case being interpreted by the authorities much too narrowly and much too rigidly. On the basis of a more encompassing and authentic notion of Dhamma, they claim, Phra Pracak's actions are not only permissible but highly appropriate and commendable. At the same time they have argued that only in the most extreme cases, if at all, do the secular authorities have a right to apply legal sanctions and punishment to a member of the Buddhist order.[14] In this case, they contend, such action has no justification whatsoever.

My intention is not to evaluate the claims of Phra Pracak's supporters or opponents; given what I know of the controversy, my sympathies lie with the monk. What I want to emphasize here is the character of the rhetoric. The first conclusion that we can draw is that the civic religious tradition has provided the locus for the imaginative-symbolic and practical, programmatic discourse that has taken place. The second, more general conclusion is that the civic religious tradition has provided (and continues to provide) the legitimating symbols that are continuously being employed to constitute and reconstitute the most basic elements in the dominant tradition of secular law in modern Thailand.

Particular religions and the law

The relations between religion and law in contemporary Thailand are by no means exhausted by the role played by civic religion in generating the distinctive type of legal sensitivity that is characteristic of the mainstream tradition of secular law. To extend the discussion of these relations, it is necessary to consider the ways the mainstream tradition of secular law engages particular

religious traditions and particular strands within these traditions. Because Buddhism is by far the most important of the particular religious traditions in Thailand, the relations between modern secular law and Buddhism are of paramount interest. For our purposes it will be helpful to separate two strands within modern Thai Buddhism. The first is basically conservative in that those involved are generally in concert with the mainstream interpretation of Thai civic religion and with the current patterns of Thai politics and law. The second strand is more radical in that the beliefs and practices of those involved have produced tensions within the status quo and conflicts with the powers that be.

Within the conservative strand of the Buddhist tradition, perhaps the most powerful and deeply entrenched type of Buddhism is the one that includes the government-supported and government-regulated monastic hierarchy and its lay supporters. This establishment Buddhism includes the Thammayut Nikaya, founded by Prince Mongkut in the middle of the 19th century; the older Mahanikaya, which includes the great majority of Thai monks; and the lay supporters of both groups. Although the two monastic nikayas retain separate identities, associated primarily with differences of monastic practice, both are encompassed within the national hierarchy.[15]

Over the years the government has modified the structure and regulations related to the monastic order in response to the changing political climate in the Sangha Administration Acts of 1902, 1941, and 1962. But government support and control, with all of the attendant advantages and disadvantages, have remained intact. The pattern of establishment Buddhism has, moreover, been used to encompass and transform different monastic traditions in areas that have been incorporated into the Thai state.[16]

Other conservative groups have appeared from time to time that are not part of establishment Buddhism. By far the most successful of these more independent conservative groups is the very distinctive Dhammakaya community, which emerged in the 1970s. Over the past decade or so it has gained a remarkable number of converts.

The Dhammakaya group has been described as a "fundamentalist" expression of contemporary Buddhism (Swearer 1991). It has adopted as its central practice a simple form of meditation that is—from the perspective of many Theravada Buddhists—well beyond the pale of Theravada orthodoxy.[17] The Dhammakaya leaders, who advocate the cultivation of personal ethics and moral purification as the favored solution to the problems of Thai society, have organized a massive evangelistic program using modern media techniques. Thus far the group has gained more than a million converts; it has succeeded in accumulating a vast amount of wealth; and it has developed an organizational structure that operates quite independently of the national monastic hierarchy.

The Dhammakaya community, in spite of the questionable orthodoxy of some central beliefs and practices, its trenchant critiques of monastic and social corruption, and the relative independence of its organizational structure, has managed to avoid any serious altercations with the officially sanctioned

monastic hierarchy or the government. The success of its effort to avoid ecclesiastical confrontation can be explained in part by several strategies that the movement has adopted. The Dhammakaya leaders, who have their headquarters at Wat Dhammakaya, just north of Bangkok, have not established new *wats* (formally established temples that require official sanction) but have instead organized more informal meditation centers, student groups, and the like. They have maintained their official allegiance to the Vinaya tradition of ecclesiastical law. And they have adhered to the ordination procedures legalized by the official monastic hierarchy and approved by the government.

The Dhammakaya avoidance of direct confrontation with the government (despite accusations of financial improprieties and some rumors of impending investigations) is also related to the emphasis that it places on a conservative vision of Buddhist nationalism.[18] Donald Swearer (1991) has even claimed that, in a context where the established civic religious tradition of Chat, Satsana, and Mahakesat is showing signs of cracking at the seams, the Dhammakaya movement is presenting a new alternative. According to Swearer, this alternative version of Thai civic religion has two primary and inseparable foci: Thai nationalism and a renewed and revitalized form of Buddhism that is specifically identified with the Dhammakaya movement. However that may be, the Dhammakaya community has been successful in attracting strong support from the upper echelons of Thai society, including many wealthy businessmen and prominent military leaders; and the crown prince has recently been ordained as a temporary monk at Wat Dhammakaya.

In contrast to the strand of Thai Buddhism that is constituted by establishment Buddhism and the Dhammakaya movement is another important (though much weaker) strand that coexists with it. These more radical Thai Buddhists, because of their more critical and activist stance toward Thai religion and social life, have run into serious opposition from the authorities. Among these groups, the two with the greatest influence and prominence are the Santi Asoke movement and a loosely coordinated network of "engaged Buddhists."

The Santi Asoke movement, like the Dhammakaya movement, took shape in the 1970s and expanded very rapidly in the 1980s. It was founded by Phra Bodhiraksa, a former television personality who claims to the status of *ariya*, or fully realized saint (a claim that, according to mainstream Theravada orthodoxy, is arrogant and therefore necessarily false). With roots in the tradition of highly ascetic forest monks, Santi Asoke has generated a kind of utopian community that emphasizes renunciation and moral purification. The community includes, besides monks, lay members who adhere to a strict personal discipline that has much in common with the discipline of the monks. Holding forth the Santi Asoke style of communal and personal life as an ideal, those who speak for the movement are intensely critical of the corruption, self-indulgence, and laxity that they see in the mainstream Sangha, in the government, and in society as a whole.[19]

Unlike the leaders of the Dhammakaya movement, Phra Bodhiraksa has

directly challenged the official monastic hierarchy. Originally ordained in the Thammayut sect, he became alienated from his mentor, was asked to renounce his ordination, and did so. Later, having been reordained in the Mahanikaya, he decided to completely sever his ties with the official Sangha hierarchy. Acting on his own authority, he ordained 80 monks, who became the monastic nucleus of the Santi Asoke community.

Given Phra Bodhiraksa's unorthodox claim to saintly status, his bold assertion of ecclesiastical independence, and the intense rhetoric of his attacks on social corruption and self-indulgence, a reaction from the authorities was virtually inevitable. The public confrontation began in earnest in 1988, when Phra Bodhiraksa was defrocked by the official Ecclesiastical Council in a process authorized by the Sangha Administration Act of 1962. After he refused to comply with the decision, he was arrested by the secular authorities. With the help of a great deal of public pressure on his behalf, an agreement was reached, and he was released from jail. Since then, Phra Bodhiraksa has, in accordance with the agreement, refrained from wearing the yellow robes that signify authentic monastic status. At the moment, the case against him is still pending. But it is probably safe to predict that as long as the present government is in power, Phra Bodhiraksa and his followers will not be allowed to reclaim monastic status; and it is also the case that—at least partially as a result of the confrontation with the ecclesiastical authorities and the government—the Santi Asoke movement appears to be on the wane.

The encounter of engaged Buddhists with the authorities is quite different. Those whom I have labeled engaged Buddhists[20] do not constitute a single organized community like the Dhammakaya and Santi Asoke movements. Rather, they are a loosely connected network of Buddhist organizations and individuals who are motivated to organize and participate in various kinds of social action projects. Generally speaking, engaged Buddhists are on the left side of the political spectrum and become involved in projects that are at odds with the policies and interests of business organizations and government officials. Moreover, these groups and individuals tend to cooperate with people in other religious communities (particularly, though not exclusively, Christians) who share their religiously oriented social concern and their commitment to social action.

Over the past several decades the best-known exemplar and spokesman for the engaged Buddhists has been Sulak Sivaraksa, a member of the laity who has had an extremely active career as a writer, teacher, editor, public speaker, and organizer. For both symbolic and substantive reasons, he has been at the center of the confrontation between the engaged Buddhists and the government. In 1976, following the military coup that replaced the more liberal government that had emerged in the wake of the student rebellion of 1973, Sulak's office was ransacked, and he wisely chose not to return from overseas—he was making a trip at the time. After the situation had quieted down, he did return; and he immediately organized more Buddhist-oriented social action groups and

projects. In 1984, after being charged with lèse majesté, he was imprisoned for four months. Once again, late in 1991 he was accused not only of lèse majesté but also of sedition. Taking seriously the threats to impose a harsh punishment, Sulak took refuge in the German embassy and subsequently escaped, via Laos, to the West. He has since returned to Thailand, where he faces trial and the threat of imprisonment.

By harassing Sulak, Phra Pracak, and others who have taken similar actions, the government has sought, with considerable success, to blunt the effectiveness of the engaged Buddhists and to resist many of the changes for which they are working. Despite the government's legal and semilegal harassment of group leaders, however, many engaged Buddhist groups and individuals continue to pursue their antiestablishment agenda.

Although in Thailand the most important relations between the law of the nation and particular religions pertain to Buddhism, other important relations involve other religious traditions. The most important are the relations with Islam, which, after Buddhism, is the religion with the largest number of adherents (around 4%, according to government figures) and the religion of the great majority of the inhabitants of the Thai provinces that border Malaysia. The significance and interest of the relation between the government and Islam is accentuated and complicated by differences between Islam and Buddhism, including the basic pattern of communal organization and the attitude toward secular law.[21]

Over the years the Thai government has attempted to forge a connection between the secular law of the nation and the Islamic community that would parallel the connection between secular law and the Buddhist establishment. But these efforts have been seriously hampered by the absence of an ecclesiastical component in the structure of the Islamic community that is similar to the Buddhist Sangha, and by the Muslims' insistence on the continued use of Muslim secular law. The government's relative lack of success in this endeavor, coupled with many other factors, has led—particularly in the south—to serious controversies between the Thai authorities and the Muslim community. No satisfactory resolution has yet been found.[22]

Other specifically religious groups among the Thai have, generally speaking, been permitted a remarkable degree of religious freedom, though there have been some tensions over the years. During the period of chauvinistic Thai nationalism in the early 1940s, for example, adherents of other religions were pressured into participating in Buddhist activities. In 1991 the followers of the Rev. Sun Myung Moon were accused of undermining family values and were subjected to semilegal harassment.[23] But the overall relation between such minority religious communities as the Christians, the Hindus, and the adherents of the Japanese new religions has been one of acceptance and mutual accommodation—in part because the communities have remained small and have not sought to use religiously grounded forms of secular law.

For the most part, legal involvement with the so-called animistic traditions—

which involve the veneration of the *phi*, or spirits—has been relatively uncontroversial. Government leaders at various levels have often participated in regional or local cults devoted to the phi, and legal interference with the phi cults has been limited.[24] In recent years, however, two loci of tension have developed. The first has emerged in villages where land associated with local phi—sacred land that the villagers consider off limits—has been given over to private ownership or developmental exploitation (see Keyes, n.d.). The second has emerged in the rapidly expanding urban cults in which phi speak through mediums about personal problems and social issues. Sometimes strong messages have been conveyed advocating the legal prohibition of development projects that pose environmental risks. A rumor that recently circulated in Chiang Mai attributed the crash of an Austrian airliner, in which many members of the Chiang Mai elite were killed, to the retribution of phi whose warnings had been ignored.[25]

The situation with regard to the religions of the so-called hill tribe groups has been quite different. Most of the hill tribe groups in Thailand have had, until recently, a religiously oriented way of life in which communal religion and communal law have been inseparably woven together. Many groups, when translating the word that they use to identify their traditional complex of religious and legal customs, choose the Thai term *gotmai*—a word that in Thai refers specifically to the secular law of the state.[26] It follows that when hill tribe groups confront the national political and legal system, religious elements are inevitably involved. Moreover, the problems that these encounters generate in the hill tribe communities are exacerbated by the failure of the secular political and legal system that is being imposed to recognize tribal religions as religion (Satsana). These problems have also been made more serious and complex by the failure of those who represent and implement the new system to recognize the religious implications of the nationalization and development projects in which they are engaged.

Unfortunately, scholars working in the hill tribe areas have not, to my knowledge, focused any serious attention on the very complex relations among tribal religion, tribal law, and the new secular law. The best that we can do now is to identify important topics for future research.[27]

Conclusion

At the beginning of this essay I set forth four basic methodological points drawn from Geertz. By way of conclusion, I would like to explicate three additional points that have been central to my interpretive strategy. First, I have recognized the importance of the presence or absence (the differentiation or nondifferentiation), in any given situation, of four possible types of law. These are (1) cosmic law (e.g., the Buddhist Dhamma in its most general religio-philosophical meaning); (2) ecclesiastical law (e.g., the Vinaya, which serves as the law or discipline for the Buddhist monastic order); (3) secular law in a traditional

religious setting (e.g., the old Buddhist Dhammathat and the Muslim Shari'a); and (4) the secular law of the modern nation-state.

Second, I have recognized the importance of a modern form of civic religion. More specifically, I have traced the relations and interactions between the evolving expressions of that modern civic religion, on the one hand, and the continuing constitution and reconstitution of the national legal culture, on the other.

Third, I have emphasized the importance of the relations and interactions between (1) the law of the state, in both its imaginative-symbolic and more programmatic, practical dimensions, and (2) the particular religions and associated legal traditions that are supported by significant segments of the population.

My primary goal in pursuing this post-Geertzian approach to the study of religion and law has been to generate a broader and deeper understanding of the relations and interactions between religion and law in Thailand, but perhaps it could facilitate the study of the relations and interactions between religion and law elsewhere in Southeast Asia (and beyond).

Notes

1 In coining the phrase "law as a cultural system" and in the discussion that follows, my purpose is not to present a simple restatement of Geertz's ideas. Rather, I am using my reading of his essays to generate insights that will be useful for my own purposes.

2 For an excellent discussion that develops this point see O'Connor 1980.

3 The early development of this notion, which is basic to any adequate understanding of Theravada Buddhism in general and Thai Buddhism in particular, is spelled out in my title essay in Obeyesekere, Reynolds, & Smith 1972.

4 For an excellent discussion of Vinaya discourse that deals with both dimensions, see Holt 1981.

5 This myth tells of a time when Mahasammata (the first king, whose name or title means "Great Elect") confronts the need to restrain the chaotic conditions that had developed among his people. According to the story, an adviser named Manu enters into a meditative state, travels to the wall of the universe in which we live, and finds there—written on the wall—the legal code that he is seeking. When Manu emerges from his meditative trance, he remembers what he saw and proceeds to make available the Dhammathat or Dhamma commentary.

6 In the Theravada kingdoms where the Dhammathat was established as the basic code of law, it was supplemented by additional laws enacted by kings and their advisers. I discuss the kinds of supplementary laws and the differences among various Southeast Asian traditions in Reynolds 1990.

7 Premodern Thai kings were also closely involved with religions other than Buddhism. In most cases they supported certain aspects of Brahmanism and certain aspects of the local spirit-cult traditions. They also had connections of varying intensity with non-Buddhist traditions, such as Islam and Christianity. See Yoneo Ishii's essay in this volume.

8 A Thai word for "custom" is *thamniam*, whose direct linguistic association with Dhamma is obvious.

9 The Phi Bun were charismatic leaders who were perceived to have great supernatural power because of the great merit they had earned in past lives.

10 Geertz takes his contrast between "normal" (or "standard") discourse and abnormal" (or nonstandard) discourse from the philosopher Richard Rorty. In passages quoted

by Geertz (1983:222–23), Rorty defines normal discourse as "any discourse (scientific, political, theological or whatever) which embodies agreed upon criteria for reaching agreement" and abnormal discourse as "what happens when someone joins in the discourse who is ignorant of these conventions or sets them aside."

11 For a general discussion of civic religion and the relevant Thai material, see Reynolds 1971, 1977.

12 The emergence of the notion of a differentiated form of civic religion in the context of the Western Enlightenment and the French Revolution is discussed in Robert Bellah's famous essay, "Civil Religion in America," in Bellah 1970.

13 The association between the notion of a constitution and the notion of Dhamma is signaled by the inclusion of Thamma (the Thai rendering of Dhamma) in the word *Ratthathammanun* itself.

14 According to traditional practice, a monk can come under the jurisdiction of the secular authorities only after he has been defrocked by the order of monks.

15 In recent years there has been much debate on the status of "nuns" within the Sangha in Thailand. The debate includes discussions of the mae ji (white-robed women who have taken Buddhist vows)—who have been a part of Thai Buddhism for several hundred years at least—and disagreements over the attempts, on a very small scale so far, to establish an order of bhikkuni (fully ordained Buddhist nuns). The bhikkuni order played an important role in early Buddhism but never—so far as can be determined—was a part of traditional Buddhism in Thailand. For a discussion of these very important matters from the point of view of an involved feminist see Chatsumarn Kabilsingh 1991, esp. pp. 36–65.

16 For an excellent account of this incorporation in the north of Thailand, see Keyes 1971.

17 The meditative technique, which seems to have close affinities with certain practices of Esoteric Buddhism, involves a process through which the practitioner attains a vision of the Dhammakaya (the Dhamma body of the Buddha, equated with Ultimate Reality). With further meditation on the Dhammakaya, the practitioner is able—according to the Dhammakaya teaching—to achieve the highest Buddhist goal: Nibbana, or Release.

18 The emphasis in the Dhammakaya is not exclusively nationalistic. To the contrary, the strong emphasis on Thai nationalism is combined with an evangelistic mission to spread its Buddhist message worldwide.

19 Chamlong Srimuang, who is an outspoken member of Santi Asoke, is a successful political figure who was for many years the governor of Bangkok. His affiliation with Santi Asoke is well known, and his integrity and ascetic life-style are widely praised and admired. According to a national poll taken in early 1992, he was, among possible candidates for the post of prime minister, the one who—apart from the incumbent—had the most popular support.

20 I have taken the term from a publication by Sulak Sivaraksa (1988).

21 Although Buddhism in mainland Southeast Asia developed its own system of secular law, this situation is not typical of Buddhism as such. In most areas at most times, Buddhists have more or less accepted the secular law of the society in which they live. Muslims, throughout most of their history in most areas where they have lived, have, in contrast, insisted very strongly on utilizing their own Islamic tradition of secular law.

22 I am limiting my discussion of these issues because the most relevant points are treated in some detail in the excellent essay by Yoneo Ishii in this volume.

23 For example, public warnings were issued, and the police ransacked the house of the local leader of the group.

24 An interesting situation developed in Chiang Mai in the early 20th century when the

responsibility for the still-active cult of the regional phi, previously maintained by the descendants of the local kings, was transferred to villagers in the area where the central rituals were performed. It is very probable that further research would reveal developments of this type in other areas of the country.

25 Rosalind Morris, a doctoral candidate in the Department of Anthropology at the University of Chicago, expects to complete her research on these urban cults in Chiang Mai late in 1994.

26 Cornelia Kammerer first mentioned this point to me in a discussion about the Akha. The idea that this very revealing translation practice might apply in the case of other tribal groups was confirmed in a subsequent conversation with Sue Darlington.

27 Insofar as Cornelia Kammerer's (1990) analysis is relevant to the issues that concern us here, it suggests that the inherited religious traditions that encompass both religion and law are being—in some cases at least—replaced by a more differentiated pattern that combines two distinct elements. The first is a religious commitment to a distinctively Akha Christianity, which (like most other forms of Christianity) allows for the concentration of the central practices of the religious life in a specifically religious sphere. The second is an acceptance of many aspects of Thai culture, including the modern Thai system of secular law.

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THE 32 *MYOS* IN THE MEDIEVAL MON KINGDOM

H.L. Shorto

Source: *Bulletin of the School of Oriental and African Studies, University of London* 26, 3 (1963): 572–91.

> He hunted the valley till it was midday. Moreover, there were with him two-and-thirty crowned kings, his vassals at that time. Not for the joy of hunting did the emperor hunt with them so long, but because he had been made a man of such high dignity that he was lord over all those kings.
>
> 'The dream of Macsen Wledig'

That the three provinces which constituted Rāmaññadesa, the Mon kingdom in Lower Burma, were divided into 32 townships is one of those acknowledged crumbs of fact which, passed down from historian to historian, never seem to excite more specific inquiry. The institution has suggestive parallels and analogues elsewhere in South East Asia, to the study of which Sir Richard Winstedt, in the 'History of Perak' which he wrote with R. J. Wilkinson,[1] himself contributed almost thirty years ago. I have, therefore, thought the time opportune to embark on a narrower investigation of it; an investigation which, starting with a re-examination of the historical evidence, leads by way of the related hierarchies to which I have alluded to a new interpretation of the Burmese pantheon of 37 *nats*, and in its passage throws much light on the origins of political organization in the region.

The 32 *myos*

The supremacy of Pegu in Lower Burma was finally established by Rājādhirāj in the late fourteenth century, and it was he who according to the tradition usually cited decreed the division of each of the three provinces, Hanthawaddy, Martaban, and Bassein, into 32 *myos*—townships or districts.[2] But some doubt is cast on this assertion by the absence of any reference to it in the biography of the king by the Baññā of Dala. One passage of this work, which was probably

composed not later than the sixteenth century, speaks of 30 low-country districts subject to Martaban, 17 subject to Bassein, and 30 up-country districts; while another refers to 'the forces of Martaban and the 12 provinces'.[3] We must therefore look for other testimony.

The first allusion to the 32-*myo* system in a dated document occurs in the Kaunghmudaw inscription of A.D. 1650 at Sagaing. In 1540 the kingdom of Pegu had been brought under one crown with Ava and Toungoo, and the city, with a Burmese dynasty on the throne, continued as the capital of the wider realm for more than a century. The inscription records, among other events, the coronation of Thalun in 1633 'in the kingdom of Hanthawaddy [i.e. Pegu], head of Rāmaññadesa, to which pertain these ninety-nine towns: in the province of Martaban, thirty-three towns; in the province of Bassein, thirty-three towns; in the province of Hanthawaddy, thirty-three towns'. The figure of 33 for each province represents the 32 townships together with the capital, which was separate. A later passage names as 'regions' (*prī krī*) of Rāmañña Rangoon, Dala, and Myaungmya along with Hanthawaddy, Bassein, and Martaban.[4]

The subsequent history of the *myos* is reasonably well documented. Except in Bassein, the administrative divisions of 1650 seem to have continued in force until the first Anglo-Burmese war. At this time the former Mon dominions consisted, besides the three main provinces, of the smaller independently administered province of Syriam, which included Dala, and of Rangoon, this last town having long enjoyed a special status as a religious enclave, the glebe land of the Shwe Dagon pagoda.[5] The division of Hanthawaddy and Martaban into 32 townships is recorded in the respective land rolls of 1802 and 1766, where the townships are enumerated.[6] Regarding Bassein, of which no land roll has come to light, a notice in the Calcutta *Gazette* of 3 May 1827 states: 'The province of Bassein is said to have contained formerly thirty-two townships, but of these only eight remain'.[7] I shall discuss this statement below in the light of other evidence.

When we attempt to establish the state of affairs before 1650 we enter more nebulous territory. We have often to rely on inference and conjecture. In drawing on the chronicles, we have to remember that they are compilations, not always readily datable, of accounts which can seldom be tested except by their mutual consistency. This being said, we may note first the widespread tradition that Thaton, the early Mon kingdom which was overrun by Anawrahta in 1057, had 32 *myos* like the later provinces, each the seat of a subordinate prince, and united by a *cetiya* cult. This tradition was current at least as early as the reign of Dhammacetī. In inscriptions at the Hpaya-ywa, Hsudaungbyè, and Mokhainggyi pagodas which he repaired near Pegu—the first named dated B.E. 848, or A.D. 1486—Dhammacetī recorded how on the death of the Buddha the arahat Gavampati brought one of His teeth to Sirimāsoka, king of Thaton. In fulfilment of a promise made by the Master when He visited Thaton 37 years earlier, the tooth multiplied into 33, which the king enshrined in as many small stone *cetiyas*. Later, at the time of the mission of Soṇa and Uttara, the *cetiyas* were discovered in a state of ruin and the relics once more severally enshrined. It was

a group of those monuments which Dhammacetī believed himself to be repairing.[8] The Hpaya-ywa had been previously repaired in the time of Rājādhirāj, and it is likely that the legend was already current then.

The connexion between the 33 relic pagodas and the 32 *myos* is made explicit in the longer version of the story in *Gawampati*, a work written about 1710. 'When My tooth which is to be in 33 places in brought here', the Buddha is made to say at the time of His visit, 'all those localities to which the relics are translated shall afterwards constitute the domains and possessions of the Mon country.' The relic pagodas are to be the palladia of the kingdom: 'From the time that My tooth is kept here, truly all creatures shall be free from famine'. And the miraculous multiplication is attributed to the desire of Siridhammāsoka's 33 queens each to enshrine it herself.[9] This last statement arises from the king's implied marriage into all the subordinate lineages. The chiefdoms were transmitted in the female line; and Anawrahta and his successors, marrying into the Thaton royal house, took the same way of legitimizing their claim to that kingdom.

This schema of a high king with 32 princes under him also underlies a tradition, mentioned in *Rājādhirāj*, that the king of Thaton—there Manuhaw—had 33 white elephants.[10] It equally represents the theoretical origin of the later 32-*myo* organizations. A set of mnemonic verses in the same MS as the Martaban land roll describes Wā Row, who in 1287 founded Martaban and revived the independent Mon state, as bringing 32 kings under his sway, and thus accounts for the beginning of the institution in that province.

The next contingent evidence belongs to the reign of Dhammacetī and is taken from the Kalyani inscription, that great epigraph in which the king, after reviewing the history of Buddhism in Burma and describing the schisms and abuses affecting the monastic Order in his time, recorded in detail the drastic course of his reform. He found a way to declare all existing ordinations and ordination places invalid, and sent a group of monks to Ceylon to seek valid ordination there. On their return, with the succession rectified and united, fresh ordination places were consecrated wherever there was a need for them—they are enumerated on faces K and L of the inscription—and ordination henceforth restricted to those whose conduct did not give rise to censure.[11]

There is a reference early in the text (B 45) to the familiar three provinces, Pegu, Martaban, and Bassein. Our chief concern, however, is with the list of ordination places or *sīmās*. When those which can be identified are plotted on a map the catalogue is seen to cover all parts of the kingdom as far south as Amherst, though east of the Sittang, where the population must have been largely Karen or Taungthu, *sīmās* are generally limited to the riparian fringe. The last three-quarters of the list is arranged under paragraph headings of the type: 'In Bhimapūra, ...', 'In Syriam, ...'. 27 places are thus singled out: Bhimapūra (Wanetchaung?), Syriam, Rangoon, Lak Khrek Mah Smīṅ (Letkaik), Tar, Jray, Klon Palāy 'the Palè ridge', Laṅkā Kruṅ Kāwaṇṇa, Samrī (or Samrim), Damkāk, Dala (Twante), Hlaing, Danubyu, Moriya, 'His Majesty's

place of residence' (Zaingganaing opposite Pegu), Klon 'the ridge', Bassein (?), Myaungmya (?), Koliya (Kawliya-myoyo), Candapūrī (Donzarit?), Sittang, Yinnyein, Moulmein, Gyaing, Carot, Jrā (Kamawet), and Martaban.

Of these, Hlaing, Zaingganaing, Sittang, and perhaps Candapūrī recur in later texts as *myos* of Hanthawaddy, while Bhimapūra, Klon Palāy, and Laṅkā Kruṅ Kāwaṇṇa lie within the province. Yinnyein, Moulmein, Gyaing, and Jrā are known as *myos* of Martaban, also listed, and Carot is in the region of Wagaru, a later *myo*. Bassein and Myaungmya, if correctly identified, and Danubyu belong to Bassein, and Syriam, Dala, and Letkaik to Syriam; Rangoon, as we have seen, had a special status. The first quarter of the list embraces *sīmās* in the capital itself and then a number in districts outside it, notably in the later *myo* of Zwèbon, suggesting that the insertion of town or district names as headings was an afterthought on the part of the compiler. Thus the question arises whether the 27 names which we have here are not part of a list of 32 *myos*, to be completed by adding some unspecified names at the beginning and Ye and perhaps Lamaing at the end. Dhammacetī, who gave currency to the Thaton legend, may be presumed to have known its significance. Among the pagodas which he repaired only the Mokhainggyi, which is in Pegu town, is demonstrably connected with one of the Kalyani districts; but in view of the concern shown by kings in Burma on other occasions to establish their continuity with earlier dynasties, it would not be surprising to learn that the unitary organization attributed to the first Mon state embraced all Rāmaññadesa in his day.

Two sources, both much concerned with the territorial system, assign the Hanthawaddy *myos*—and thus the triple division—to a later period. Unfortunately, neither of them is conclusive. The Hanthawaddy land roll of 1802 states that the *myos* were constituted in the time of Dakā Rat Pi, the last Mon king before the union of 1540; but this may simply be an inference from the fact that the last of the headquarters towns, Hintha Zaingganaing, was founded in his reign.[12] In the 'History of Syriam' the institution of the *myos* is ascribed to Bayinnaung, who restored the union after the interregnum of 1550–1. This, though more convincing, might mean only that he gave formal approval to an arrangement inherited from his predecessors, just as district headmen, whose office was in fact hereditary, were in form appointed by each new king on his accession. The same work attributes the final boundaries of the Rangoon enclave to Dhammacetī, who revoked excessive grants made in the previous reign by Bañā Thau; and those of Syriam and perhaps—the passage is not entirely clear—its division into four districts to Pindale, the author of the Kaunghmudaw inscription quoted above.[13]

To sum up, there was a tradition that the Thaton kingdom annexed by Pagan in the eleventh century had consisted of 32 principalities. The medieval state of which Martaban and Pegu were the successive capitals was divided into three main provinces, Pegu or Hanthawaddy, Martaban, and Bassein (and probably two smaller units, Syriam[14] and Rangoon), and these retained their identity under the Burmese kings until the British annexation. We have found no evidence for

the assertion that Rājādhirāj was responsible for the subdivision of the three provinces, apart from one vaguely phrased allusion in his biography; the authors most concerned with the territorial system ignore it. There is a strong possibility that the state as a whole consisted of 32 districts in the late fifteenth century, the arrangement presumably being, in view of the tradition regarding Thaton, of some antiquity; and that the provinces were individually divided on this pattern shortly before or shortly after the union of 1540. The ascribing of this innovation to Rājādhirāj may be seen as a reflection of his fame as consolidator of the Mon dominions.

The number of 32 was arbitrary rather than accidental, and some quasiritual significance undoubtedly attached to it. Thus it is that the lists of *myos* given in the Hanthawaddy land roll and in the 'History of Syriam' do not agree at all points; the number remained constant, but the composition was changed from time to time. Latterly the reality was accommodated to the ideal at the cost of some equivocation. In 1766 Martaban had 32 *myos* but only 29 *myothugyis*, the former number being maintained by including three very small townships which were appanages of larger neighbours: Darè, Iwè, and Ibyit. (The autonomy of Iwè may in itself have had ritual significance; it was associated with the cult of Gavampati and with the powerful *nat* of Zingyaik hill, and the administering township, Yin-on, was not contiguous.) Some of the *myos* listed in the 1802 Hanthawaddy roll by then had been abandoned and existed in name only, and the tale was completed with Ramanago and Ramawadi, legendary names of Rangoon whose purport was so far forgotten that they were confused with Ramree in Arakan. Equally, the conversion of one set of 32 *myos* into three does not imply any sudden tripling of population. The 32-*myo* pattern clearly belonged to that group of institutions on the strict maintenance of which the well-being of king, state, and people was believed, with a conviction transcending ordinary conservatism, to depend.

Other numerical constants are associated with the topography of the capital city, and were adhered to with equal devotion. Not only among the Mons, but among the Pyu, the Burmese, and the Shans also the city conformed wherever possible to the square plan prescribed by the *Arthaśāstra*, with 12 gates connected by straight roadways dividing the enclosure into 16 blocks or quarters.[15] It was a keep or citadel rather than a walled town of the European type. The model holds good from Śrī Kṣetra, as described in the 'New T'ang history', to Mandalay, built in 1859.[16] At Martaban the limitations of the site, a narrow strip of ground bounded by a ridge on one side and by the Salween and a tributary creek on the other, enforced an attenuated ground-plan, and the part of the stockade which followed the crest had only one gate. Nevertheless the traditional scheme of 16 quarters and 12 gates was maintained, the quarters being laid out two by two, with a single quarter spanning the enclosure at either end. Accounts differ as to which of the various gates and posterns were the 12 significant ones; but at least one gate opened on a lane in mid-quarter.[17]

In the case of the Mons, the tract immediately surrounding the city and

separating it from the townships was divided into 12 *zas*, each about the size of a modern village circle. These may have corresponded to the 'royal lands' mentioned by Harvey, which paid rent, not tax, to the crown[18]; probably in the ideal situation they lay one outside each of the gates.

Turning to the political aspect of the institution, we may recall that the archetype supposes a king who is in fact a high king ruling over a circle of subordinate princes. This was no mere origin myth, but provided a model which must once have accorded reasonably well with the facts, and even in later times affected practice. The three provinces of Rāmaññadesa were originally independent kingdoms; and these in turn represented a coalescence of lesser principalities and chieftainships, indications of which are to be discerned here and there in later records. Thus the *zas* of Moulmein and Ye survived as fiefs into the eighteenth century,[19] while discrepancies in the specification of neighbouring jurisdictions in different parts of the Martaban land roll may be used to trace the extent of the old Moulmein dominions. When a state was conquered there seems to have been no idea in Mon or Burmese, any more than in Indian, political theory that it was possible to extinguish it as a sovereign entity, or to annex it in the modern sense, though its ruler might be replaced by a nominee of the conqueror. The nominee was still accounted royal, like Let Wawthuya or Let Wawyathuya, who according to Mon chronicles was left by Anawrahta in charge of Thaton, was regarded locally as king, and founded a dynasty.[20] Even under the Alaungpaya dynasty the offices of provincial governors were dignified by the title of *yondaw* 'royal court'. The relationship between the king and his subordinates was thus formally one of suzerainty. Within the period covered by European accounts, the rulers of Arakan administered a form of coronation to their governors, one by one, on the steps of the throne.[21] Among the Mons this seems to have been an exceptional honour; but when Prince Sām Lek took Donwun from the rebels about 1370, Baññā Ū invested him with 'royal ornaments and regalia' and gave him the township as a fief. The same king, making a conciliatory approach to two rebel princes, could lean on the fiction of alliance between monarchs and chide them, not with insubordination, but with 'breaking the bonds of friendship'.[22] So in 1527 one Siṅgasūra, the donor of a bell at the Kyaikthanlan pagoda, represented himself as king in Moulmein and successor of a line of kings.[23] On the Mon borders, Fort St. George entered into negotiations with the 'king' of Tavoy in 1752, as with an independent ruler.[24]

This state of affairs is reflected in the terminology. *Smiṅ*, like the Burmese word *min*, applied equally to the king and the princes, and similarly *ḍuṅ* might signify either the capital, or a provincial city, or a district town. Mon had no single specific term for the king as such apart from the loanword *ekarāt*, which was used sparingly until relatively recent times. Instead, compounds and periphrases were employed: in the Pagan period, *gna smiṅ*, which appears to be a calque on *mahārāja*[25]; in the medieval kingdom *tala ñaḥ* 'owner of the people'; from 1500 often *smiṅ ekarāt*. At the head of the ordinary *smiṅ* were four *baññās* who were the senior nobles of the realm, but apart from them there

was no elaborate hierarchy, the districts and their heads depending more or less directly on the capital and crown.

It is possible that the *bañās* originally had territorial responsibility for the three provinces and Syriam, with the *smiṅ* of appropriate districts as their vavasours. We have no direct information on the point. In the triple system there was no intermediate unit between the 32 *myos* of a province and its capital. However, Rājādhirāj, after rebelling against his father at the end of the latter's reign, conferred the title of Prince of Pegu on one of his followers; and since the office was clearly distinct from the crown, it may have been that of provincial chief.[26]

Buddhism did not forbid polygamy; for kings it was obligatory. The form of suzerainty preserved the custom whereby the overlord took wives from his vassals' lineages, so making good his right to command as well as adding ties of kinship to those of loyalty. Hence we often read in the chronicles of kings marrying, or taking into their seraglios, the daughters of important princes. In the same way they married the daughters of their enemies when they captured them and their widows when they had bereaved them, and exacted a daughter, if they could, as the price of an alliance. The leading princes themselves commonly had several wives.

Such ideas continued to influence events throughout the pre-colonial period, and were undoubtedly responsible for a climate in which rebellion remained a perpetual threat. Nevertheless, their relevance gradually declined as the power which had attached to the hereditary rank of prince passed to the office of feoffee, conferred by each king individually. Progressively the feoffee was more often in his district than the prince, who, if powerful, was less dangerous at court or administering another district elsewhere. Since feoffees were thus appointed from among the princes, the process did not—at least initially—entail any change in the composition of the ruling class; but it strengthened the position of the king and reduced hereditary titles to a nominal distinction, on a par with the titles of honour which he could award at will. European travellers saw these feoffees as governors, and historians have accepted the interpretation. The vocabulary of native records underlines their dependence; just as they were said to 'eat', that is to live by the revenues of, their district or village, so the king 'fed' them, and they described themselves as his servants.

South East Asian analogues

In pursuing the wider affinities of the Mon institution we shall proceed by topics, taking into account all three of the elements which were conjoined in the prototype: territorial organization, political hierarchy, and religious cult. We shall begin by assembling evidence on other federations to be brought into discussion, without at this stage necessarily justifying their relevance, and then go on to consider their compatibility and the possible historical connexions between them.

We note, first, the likelihood that a 32-*myo* system already existed in the Pyu state which preceded Thaton as the dominant power in Burma. In a description of this kingdom at the beginning of the ninth century, the 'New T'ang history' records that it had 9 garrison towns, which are listed, and 298 'tribes'. 'Those which we know by name', the passage continues, 'are 32'; and these are listed in their turn, being divided into two groups, assigned to the 'Little' and 'Big K'unlun' countries.[27] Anyone who has read Shway Yoe with critical attention will approach the reports of Chinese officials, whose information was amassed more hurriedly, with caution and due regard to other data; and the interpretation of these statements hangs very much on that of the word rendered as 'tribe'. If it subsumes entities of different kinds, perhaps including distant vassal populations, it may be thought that the 'known' tribes corresponded to the districts of the kingdom, and the Little and Big K'unlun countries to the patrimonies of the Vikramas and Varmans who, it has been suggested, were tanists dividing the realm between them.[28] Otherwise, the 9 garrison towns could be taken as headquarters of provinces, each with 32 districts under it, which together with the capital made up the total of 298. In that case the named tribes would probably have been the districts of the central province.

The first of these interpretations receives some support from a consideration of the statement in the *Glass Palace Chronicle* that Śrī Kṣetra, the Pyu capital, had 32 major and 32 minor gates.[29] Without drawing on the Chinese texts, Robert Heine-Geldern inferred as early as 1930 that it also had 32 provinces, relying on the observation that the gates of Burmese capitals were commonly named after provinces and sometimes built by their chiefs.[30] The statement of the *Chronicle*, which cannot be literally true—since we know from the 'New T'ang history' that the city had the usual 12 gates—certainly reads like a reminiscence of the provincial organization. (An inference in the opposite direction is found in the tradition that Kengtung, the easternmost of the Burmese Shan states, had subject to it 12 walled towns, *keng* or *chieng*, one to each gate. A more credible version names seven.)[31]

Kengtung was in any case another 32-district kingdom, and was still so referred to at the turn of the century, though the area comprised within these '*möng* of the Khün' was by then a good deal less than the whole extent of the state. As with Hanthawaddy, lists of them vary in composition.[32]

In ninth-century Java, as we learn from the chapter of the 'New T'ang history' which precedes that already quoted, the kingdom of Ho-ling was governed by 32 high officials; it had apparently 28 vassal states. Both Rouffaer[33] and Krom[34] take it that the officers in question were the rulers of the 28 and the four chief ministers. I shall attempt to account for the difference between this system and the Mon one, in which the *bañās* were external to the 32 *smiṅ* or feoffees, at a later stage of this paper. But the number 32, along with others which have yet to be discussed, had ritual value in Javanese polity many centuries later, and Mangkurat I, the ruler of Mataram from 1646 to 1677, claimed the title of 'Lord of the 33 Islands'.[35]

Ceylon is strictly speaking outside the scope of this inquiry. But in view of the island's long and continuing relations with the parts of South East Asia which adopted Pali Buddhism, it may be permissible to cite, as relevant myth, the account of Duṭṭhagāmaṇi Abhaya's conquest of it in chapter 25 of the *Mahāvaṁsa*. Here an organization of a similar kind seems to be fastened on the Tamils whom the Sinhalese king overthrew. The story has long been known in Burma, being represented at Pagan in the frescoes of the Kubyaukkyi; a slightly different version is found in the *Thūpavaṁsa*. In a succession of 28 battles, Duṭṭhagāmaṇi took prisoner (or according to the *Thūpavaṁsa* killed) 32 Tamil kings, most of the 16 whose capture is related in detail being eponymous lords of villages. When the final assault was mounted on Anurādhapura his forces, like those of the Greeks at Troy, were drawn up in 32 battalions; perhaps to match the enemy's array. These events supposedly took place in 161 B.C..[36]

The number 33 is only the last of a series, subsumable under the formula $2^n + 1$, which recurs time and again in political contexts in South East Asia. A. W. Macdonald, in an article in the *Journal Asiatique* in 1957, spoke of the 'profusion of five- and nine-unit systems, of a centre plus four or eight surrounding units, in the Indo-Chinese world', bringing under this rubric both 'social structures' and 'religious constructs'.[37] He quoted as instances the Javanese *mantjapat* and the 'Nine Cities' of Negri Sembilan, as analysed by de Josselin de Jong. But the minimal pattern is rather to be found in the three districts in Sumatra which make up the heartland of the Minangkabau, the *darè*'. It was from here that the colonists and the ultimate ruling family of Negri Sembilan came, and de Josselin de Jong has shown significant analogies between the political and territorial systems in the two places. The characteristic feature is the correlation between districts and the categories of the clan system. Limo Pulueh Koto and Agam are traditionally assigned to the two phratries, each of two clans, into which the Minangkabau are divided; Tanah Data, which contains the capital, is considered as mixed in this respect. The distribution is an ideal one, from which the current facts depart. There is a legend in which the peopling of the various districts results from marriages of the first ruler with different totem animals. We thus have a mythical counterpart of the marriage of a ruler into his subject lineages, and the notional representation of those lineages in the metropolitan territory.[38]

Intermediate between the *darè*' and the five-unit systems proper was Mataram, as it is described in the *Sĕrat pustaka raja puwara*. The data in this, for our purposes the most coherent of the sources assembled by Schrieke in his posthumous *Ruler and realm in early Java*, relate to the second quarter of the eighteenth century; they are supported by much other evidence. At the centre of Mataram, around the capital, were the royal appanages or *nĕgari agĕng*. The remaining area was divided into two parts known as *mantjanĕgara* and *pasisir*, each again subdivided into an eastern and a western half.[39] It is not clear how far these divisions functioned as administrative units, though in 1709 the eastern *mantjanĕgara* was under a single head.[39] However, the use of the term

mantjanĕgara (i.e. *pañcanagara*) to designate a part only of the whole suggests that they were formal survivals from a time when the kingdom occupied a rather more compact territory.

At an earlier stage of Javanese history, the marriage of the first ruler of Majapahit, Kṛtarājasa, to the four daughters of Kṛtanagara embodies the familiar theme of the alliance of a monarch with the lineages of the parts of his dominions. The princesses were identified with the four islands which, with Java at the centre, were regarded as making up the archipelago.[41] The pattern of the Minangkabau phratries and clans recurs in the divisions of Mataram. One is tempted to ask whether a myth justifying the division of territory between moieties may not underlie some of the bipartitions to which Schrieke alludes, beginning with Erlangga's in the mid-eleventh century and ending with that into Surakarta and Jogjakarta in the eighteenth. Mataram specifically had been partitioned on several occasions before, to an extent which almost recalls the twin kingdoms of Śrī Kṣetra.[42]

In the *mantjapat* the radial geometry of the *pañcanagara* found its humblest application, to the relationships between villages. The concept has been discussed at length by van Ossenbruggen.[43] *Mantjapat* means literally 'five-four'. As a term it had various uses, but in the territorial sphere it denoted a grouping of four village tracts surrounding a fifth central one, and notionally located east, south, west, and north of it. Latterly its primary relevance was in the field of customary law, as defining the responsibility for apprehending criminals or restoring stolen property; but the *mantjapat* was also the locus of markets held in each village in rotation on a five-day cycle. Van Ossenbruggen notices a tendency to reproduce the pattern in miniature in the village tract itself, whose headman had a council of four likewise called *mantjapat*, and was entitled to a fifth of the land in the tract.

In this form the institution belongs to Java, but the same quincuncial idea is found in Minangkabau, where disputes over land ownership required for their settlement the unanimous testimony of the *pasupadan*, the heads of the families owning the four surrounding plots.[44] In the Shan states, again, markets are held every fifth day, neighbouring villages having different days for the purpose.[45] Unfortunately we do not know whether they are actually grouped in fives.

Apart from its geographical use *mantjapat* denoted not only the headman's council, but also the king's council of four senior ministers. It was the first of a series of similarly bivalent terms: *mantja-lima* 'five-five', *mantja-nĕm* 'five-six', etc. Except that they signified wider and remoter classes of relationship, their geographical interpretation is in dispute. As a designation of officials, however, *mantja-lima* was applied to a group of eight who sat in two concentric circles round the king; the *mantjapat* in the inner ring to east, south, west, and north of him, and the outer four at the intermediate points. (Inasmuch as the *mantjapat* was included in the *mantja-lima* these arrangements differ from those in Perak, where receding classes of 4, 8, 16, and 32 chiefs are mutually exclusive. For Mataram the data are ambiguous but suggest an extension of the *mantja-lima*

principle: in 1744 there were four lords holding court offices directly under the king and four 'inside ministers' and eight 'outside ministers' subordinate to the vizier.)[46]

When the principle of the *mantjapat* is projected on to larger unities, the form which it takes will depend on the scale of the whole: a grouping of townships in a principality, or of provinces in an empire. The first such grouping of which we have record is the state called by Chinese authors Tun-sun, Tien-sun, or Sun-tien, which flourished from the third to the sixth century A.D. Of this state the seventh-century *Liang-shu* says: 'There are five kings who all acknowledge themselves vassals of Fu-nan'. The *T'ai-p'ing-yü-lan*, quoting the *Fu-nan-chi*, adds: 'Its king'—presumably the high king—'is called K'un-lun'. Paul Wheatley has given his reasons for supposing that Tun-sun was a Mon kingdom with its capital in the vicinity of Phong Tük or Phra Pathom.[47] We may add to them the probability that the Chinese names reflect a proto-Mon **duŋ sun*, **sun duŋ* 'five cities'.

We have already seen that Syriam, in later times, was a similar unit. It is unlikely that its independence dates only from Pindale. In particular, the subordination to it of Dala, its principal dependency, is explained by the same validating legend as accounts for Dala's status as a perpetual fief of the chief queen first of Syriam, then of Pegu, and finally of Ava[48]; and the matrilineal implications of this custom belong to an early stage of Mon society. The tradition, discussed at greater length below, which attributes the peopling of the Mon provinces to three brothers has a variant version with four. The three provinces of later times may thus derive from the reinterpretation of an earlier four including Syriam and centred on Rangoon, which were superimposed on the *myo* pattern as the domains of the daughters of Kṛtanagara, or of the lords of the shores of Java, were superimposed on that of the '33 Islands'.

Among the nine-unit systems which have an equally wide geographical range the most celebrated is doubtless the state of Negri Sembilan in Malaya. It has been legitimately objected that while the name means 'nine cities', the number of chiefdoms actually included in the federation has varied, in recent times reaching 13. Different authors are by no means agreed as to which are the essential nine. However, de Josselin de Jong has pointed out that it is precisely nine chiefdoms that are concerned in the election of a ruler, and has used this criterion to establish the operating structure.[49]

Sri Menanti is the ruler's own seat; he is elected by the chiefs of four large districts, Sungei Ujong, Jelebu, Johol, and Rembau; and each of these is separated from Sri Menanti by a smaller district which is called its 'verandah' (*serambi*).[50] The arrangement approximates to that of the *mantja-lima*, a centre surrounded by two concentric rings of four. The electors are summoned to the ceremony by clan chiefs drawn from the 'verandah' districts, and on their way there lodge for the night in their several 'verandahs'. As in Minangkabau, there is a correlation between districts and clans, of which there are 12 altogether. Some only of these—ideally four—are found in each outlying district; Sri Menanti has all 12.

Before leaving Negri Sembilan we may note the tradition that its first inhabitants were Sakai who came from the south under four chiefs and settled in four districts. Three of these are identical with electing districts.[51]

On the Kra isthmus the pre-1932 Monthon Phuket was the successor to the 'Eight *Müang*' of Thalang, a federation which has been traced back to the late eighteenth century but is probably older.[52] Here there was no separate headquarters, but with the governor there were in theory nine officials concerned. In fact Khura and Khurot were *müang* for the formal purposes of the octave only, and were administered together with Phang-nga, as appears from the Thalang letters with which my colleague Mr E. H.S. Simmonds deals elsewhere in this issue.

The 'History of Syriam', in describing events which took place in 1566, refers to the Mon settlements in the Delta below Henzada as the 'Nine Towns'.[53] In the light of this, one is inclined to look more closely at the 1827 report which says that Bassein had eight townships, though it was supposed once to have had 32. The eight, as the report describes them, were unusually large in terms of population then; but the Delta had been sparsely inhabited at most periods before the nineteenth century. If Myaungmya—an early settlement, and probably one of Dhammacetī's *myos*—is added, the list yields Bassein as capital with the Yoma at its back, Myaungmya and Thabaung forming an inner half-ring, and a string of six townships along the Irrawaddy from Pantanaw to Myanaung, in the part of the Delta which was first laid down and first settled.

This fits well enough with what is known of conditions in the area in the sixteenth century, or before its incorporation in a unified Mon kingdom. The most we can say is that the evidence is conflicting, *Rājādhirāj* allotting Bassein 17 districts and the Kaunghmudaw inscription 33; while of all the sources the inscription is perhaps most suspect, by its very symmetry.

In the remote north of Burma the nine-district pattern appears again in the old Hkamti kingdom of Mogaung, which was extinguished in 1765. It was signally modified by the environment; the Mogaung *möng* were scattered Shan islets in a jungle inhabited by Kachins, at distances varying from 22 to 160 miles from the capital.[54]

There are possible traces of a 16 + 1 pattern as an early stage in the development of Martaban. The province was reputed to contain sixteen hair-relic pagodas, which in *Gawampati* are arranged in two octaves.[55] But the sixteenth-century chronicle *Nidāna ārambhakathā* implies a cult patterned on exclusive classes like those of the Perak nobility; it says that Wā Row, the founder of the city, built the Myatheindan (where royal rituals were performed), 'the pagodas of the eight places, the pagodas of the sixteen places, and the pagodas of the four hilltops'.[56]

Clan and cosmos

Hints of a family resemblance emerge even from this dry catalogue, in spite of the slight fog engendered by conflicting or incomplete information and the

difficulty of interpreting the earliest sources. Such a corpus is inevitably both more lucid and more compelling than single instances. Some recurring features, such as the correlation with clan structure, are best discerned in the simpler groupings, while others strike more in the largest ones; and there can be considerable differences between systems of equal complexity, as with the *müang* of Thalang and Mogaung. Nevertheless, the confrontation of all types of geometrical organization has, I hope, as it has developed taken on some colour of validity. I now go on to trace certain lines of approach which offer a possibility of rationalizing the similarities between them, and fitting them in their diversity into a general historically valid picture.

A connexion with clans has been observed or urged in the cases of Minangkabau and Negri Sembilan as well as in that of the *mantjapat* and its expansions. Among the Buddhist peoples of continental South East Asia, where in general the systems reach their greatest complexity, clans are ordinarily absent; but the legend of the three Mon brothers seems to commemorate clan-founders. From these ancestors sprang the Mon Nya', the Mon Dea', and the Mon Dang, all groups to which characteristic forms of spirit worship are attributed; they used to be identified with the inhabitants of the three provinces. The Mons now usually equate themselves with the Mon Nya' (whose rites call for the coconut and the red cloth) *in toto*, regarding the others as lost tribes; but as Mon speakers have almost disappeared from Pegu and Bassein, this is not really incompatible with the older tradition. A fourth brother and tribe, and Mon Du', are sometimes added.[57]

Van Ossenbruggen sees the *mantjapat* as the creation of clans advancing into prescribed sectors from a central point, and quotes a Gajo proverb: 'Four are the castes, four-sided the boundary walls'. The *mantja-lima* and the rest would be devices to accommodate sub-clans. One may doubt the soundness of this hypothesis—where does the central canton itself come from?—but a clan system would undoubtedly tend to maintain a cantonal one where the two coincided, or were brought into coincidence. It is instructive that the distributions cited by de Josselin de Jong are ideal rather than real. Myths are relevant here, for the validating kind are commonest; which not only maintain, but—as with the myth of Kichapi which pertains to the Land Dayak head festival—provide the template by which institutions may be recreated when the conditions which called them forth no longer exist.

Now clans, notably, serve to define eligibilities and obligations of the individual in regard to marriage. In societies under the rule of a king who is conceived of as standing for his subjects, so that his actions control and determine their welfare,[58] it is to be expected that ritual limitations on marriage will bear most rigidly, and finally devolve, on him. Seen in this light, the obligatory alliances between a high king and the princes who correspondingly 'stand for' groups of his subjects follow naturally on the alliances between clans. The custom was practised extensively among the valley peoples of South East Asia. Interestingly enough, an anthropologist with wide experience of the hill peoples

of northern Burma and Assam, Edmund Leach, has observed that where those peoples are ruled by chiefs, villages have hereditary headmen, and 'the headman's lineage and the chief's lineage are usually linked by ties of affinity'.[59]

Everywhere among the valley peoples we find beliefs that their territory was acquired first from the pagan aborigines: either plainly stated, as in Negri Sembilan, or in Kengtung, where the Wa have the privilege in return of beating drums round the walls of the city at the new year; or expressed mythically in versions of the Pallava legend of the brahmin and the *nāgī*. The first king of Thaton was allegedly born of the union of a wizard with a serpent-princess whom he met on Zingyaik hill. The wizard fled when his bride gave birth to eggs; she plunged into the bosom of the earth; the eggs rolled down and were tended by a hermit till human twins came forth, the elder of whom became king. Kyanzittha, king of Pagan from 1084 to 1112, claimed a similar origin when he boasted that his father was 'of the solar line, his mother of the lineage of an egg laid in a joint of bamboo'.[60] All Burmese kings preserved this double descent, for they married their half-sisters.

As the *nāgī* is of earth, so the woman sprung from serpents is dowered with the land. Matriliny perpetuated this fiction as to the source of the land-rights to which the king laid claim. It was, however, royal matriliny, and it would in my judgment be wrong to infer a once universal system of matri-clans from it, even though these are found among some peoples such as the Minangkabau. It provided a useful mechanism for manipulating the succession, the legitimacy of which was of general concern; Schrieke observes that in Java matriliny was emphasized when it bridged a succession otherwise irregular, and in Burma it allowed something half-way to an elective monarchy. *A fortiori*, the lesser land-rights of princes were transmitted in the same way, and the high king's multiple marriages, which assured his multiple rights, had to be renewed in each generation. This in itself helped to stabilize the federative system.

Besides the representation, in one form or another, of the parts of the whole at the centre, the complexes we have been discussing share a notional orientation to east, south, west, north, and intermediate points, and usually a direct relationship between the centre and the districts, both of which are summed up in the designation of the provinces of Rāmañña as *maṇḍalā* 'circles'. Granted an initial multiplicity of pentads, expansions to 9, 17, or 33 can be fitted well enough to the process of coalescence which culminated in the states of the historical period. (In some cases, a process of disintegration might be involved.) Admittedly, direct evidence of such a symmetrical progression is generally lacking, though Thalang seems to have incorporated an earlier *pañcanagara* centred on Takua Pa.[61] But it is surely uneconomical to postulate that these institutions were all fully developed from the beginning and had only an ideological, not a sequential connexion. The problem is to account for the regularity of the steps; although such cases are not unknown, one is reluctant to propound the fission into 32 septs to which van Ossenbruggen's reasoning would lead.

We have spoken of the sustaining effect of myths. Indian cosmology is built

up in fours, and it is noteworthy that to each of our stages there corresponds a model of a cosmological nature. It has indeed been fashionable to deride those who see such patterns in political institutions, but this betrays a certain confusion between two kinds of patterns: those which beget, and those which maintain. Time and again we have seen equivocation resorted to in order to maintain the formal aspect of a complex in the teeth of day-to-day practice. The considerations which were at work were not those of administrative convenience.

In the ancient Near East, it has been said, nature was conceived of as a drama, to be set in motion annually by the enactment of appropriate rites; and these themselves gave the drama its direction. There were seasonal ceremonies in South East Asia, but by and large it was the static aspect of the cosmos which was emphasized there, and the rituals which mirrored it tended to be deployed topographically rather than in temporal sequence. If the universe is believed to be a harmony—and it can hardly be thought of as a chaos—there are plain advantages in patterning the state on it. (This is not a question of sympathetic magic, though special connexions may exist at certain points. The labour expended on constructing replicas of Buddh Gaya at Pegu and Chiengmai was, by the standards of the fifteenth century, rationally applied to produce moral behaviour and material prosperity within their zones of influence.)

The calendar symbolism of the city was the same for Ezekiel and for Mindon, but its reference was enlarged where the 12-year cycle, introduced from China, duplicated the annual procession of the months. At Mandalay it was made explicit by the zodiacal emblem 'from one of the seals of the king' attached to the *mawgun* post at each of the gates.[62] Here and elsewhere the monarch, descendant of the sun, on proper occasions made progresses round the circuit of the walls; for the need to create a cosmos bore on actors and theatre alike, and if the region was filled with little universes, their rulers played at gods. All the cosmologies convert the capital into Meru; the Mon term *smiṅ waṅ* meant indifferently the captains of the palace guard and the Lokapālas. 'Toute habitation humaine', says Eliade, 'est projetée dans le "Centre du Monde".'

Mantjapat and *pañcanagara* have obvious affinities with the cosmic model of four island continents surrounding a central mountain mass, nowhere more so than in the dowry of Kṛtanagara's daughters. They also have an analogue in the Chinese concept of the 'five regions'. If the formal visitations of the king to the parts of his dominions recall the *cakravartin*'s circuit of the *Dīpas*, they also remind us of the journeys of the Emperor Shun to the four mountains on the borders of his kingdom, in the second, fifth, eighth, and eleventh months of each year.[63] Negrais—the name was formerly applied to the southern part of the Arakan Yoma as well as to the cape in which it terminates—seems to have been a South Mountain of the Chinese kind, for the Pali form *Nāgarāsi*, 'House of the Dragon', connects it with the fifth mansion of the Chinese-Tai zodiac. (This was known to the Mons; the vernacular form of the name indicates borrowing via Tai.)

The water for the coronation of the Burmese kings was by custom brought

from a spring on Gaungzegyun, opposite the northern frontage of Moulmein. The peculiar sanctity of this islet on which no man lands shod appears to derive from its position 'in the middle of the ocean' between the four shores of Kado, Moulmein, Bilugyun, and Martaban. Once again the Pali name, *Pañcalinda*, is informative; it almost certainly represents an earlier *Pañcālinda*, in allusion to the five mountain terraces round the base of Meru.

The *mantja-lima* and the nine-*myo* complex relate cosmologically to the eight planets which divide the week and the circle of the horizon between them. (The eighth is Rahu, the planet of eclipse, which governs Wednesday afternoon.) In zodiacs their icons occupy the inner compartment, surrounding the figure of Savitri in Indian examples and that of a peacock—another sun symbol—or a ram in Burmese ones; and thus correspond to the eight-character classic, with the Yin-Yang symbol at its centre, on the Chinese divining-board (*p'u pan*). Their orientation is repeated in certain Burmese octagonal pagodas, where the same emblems or *vahanas* occur under figures of the Buddha; and the octagonal steles found at various archaeological sites, some at least of which are *indakhīlas* marking the central point of a city, belong to the same order of thought.

A less elaborate conception involving a single continent with the Himalaya at its centre antedated the four-island cosmos, into which it was incorporated as the southern island, mankind's abode of Jambudīpa. At the same time it survived alongside it especially in popular belief. The 'sixteen great cities' derive from a variant of this in which the Bodhi tree at Buddh Gaya, the *bnih ti* or ὀμφαλὸς τῆς γῆς of Mon tradition, replaced the sacred mountain at the centre of the earth. From the 101 kingdoms that surrounded each of them came the expression 'all the 101 white umbrellas' to designate the kings of the civilized world.

Heine-Geldern has shown what model was imitated in the 33, and we need not rehearse all his arguments here. The *Glass Palace Chronicle*'s comparison of Śrī Kṣetra to Sudassana is apt enough, for the king and his lords were the earthly embodiment of the Thirty-Three Gods of the Tāvatiṃsa heaven. At Thaton this is emphasized in the very name of the city: in Mon Sadhuim, in Pali Sudhammapura, after the Sudharmā, the moot hall of the gods. Perhaps Sudharmanagara was one of the names of Śrī Kṣetra. That, at any rate, is the most plausible explanation of the title Thado Dhammaraza borne later by the kings of Prome. At Mandalay the kings did not have 32 lords; but figures of the corresponding gods and the Lokapālas were placed on the steps of their throne.[64]

Heine-Geldern pointed out a difference between the Hindu Trāyastriṃśa and Tāvatiṃsa which neatly accommodates that between Ho-ling and the Burmese complexes. In the Hindu system the lowest heaven was the realm of Indra, the Lokapālas, and the rulers of the 28 lunar mansions. The Buddhists forgot the identities of the Thirty-Three altogether, and gave the Lokapālas new seats on the slopes below. Hence it is that the 32 'high officials' of Hindu Java included four ministers and 28 territorial lords, whereas the Mon *bañās* were extraterritorial and raised the total number to 37.

The number 37 is found again in the *nats* of the Burmese pantheon, who

embody on a national level the greater gods above, and in the Thagya Min share the same ruler, Sakra or Indra. In the parallel Mon cult, which died out when Ava absorbed Rāmañña and is therefore less well known, there is a clear link between the 37 gods and the *cetiya* worship associated in Thaton tradition with the territorial system: most of the '*devatās* who had entered the Stream' listed in *Nidāna ārambhakathā* are spirits who inhabited trees at pagodas or other Buddhist sites.[65] (*Nat* trees still conspicuously occur on pagoda platforms in the Mon region.) The conception of a triple hierarchy uniting heaven, middle earth, and chthonos is echoed in Kyanzittha's Shwezigon inscription in the charge laid on Indra, Gavampati, and Katakarma to watch over Pagan.

It is in my view likely that the principle of the Burmese pantheon was borrowed from the Mons, most probably at the time of the fall of Thaton. Anawrahta is generally presented as the great purifier of the Religion, who brought Pali Buddhism to Pagan; but he also brought from the southern capital the heterodox cult of Gavampati,[66] and suggestively it was he who deposited images of the *nats* on the platform of the Shwezigon. Of the two *nat* cults the Mon one was the more closely integrated with other parts of the apparatus of state. I hope to pursue elsewhere its connexions with the Chinese cult of the soil—in which a mound at the capital represented the god, while local deities were represented by similar mounds in each territorial division—and with the Cham ancestral steles set up in the middle of community and family lands.

The canalizing effect of a series of cosmological models is probably adequate to explain the preference for symmetrical expansion which the frequency of nine- and 33-unit complexes attests. A less tractable problem is presented by the fivefold pattern itself. Van Ossenbruggen derives this from clan organization; Macdonald sees in it an orientation-conscious crystallization of the territorial claims of slash-and-burn communities. This much can be said: all along the migratory routes, from South China through the basins of the Irrawaddy and Menam to Indonesia, we find universe and state intermittently conceptualized in terms of a cruciform structure of five points, the 'five regions' of China and 'sacred five' of Java. So widespread and tenacious a phenomenon is hardly to be attributed to Indian influences, nor indeed would we expect Indian concepts to take root in South East Asia except where existing institutions and ideas favoured their adoption.

Notes

1 'History of Perak', *JMBRAS*, XII, 1, 1934.
2 G. E. Harvey, *History of Burma*, 1925, 115. Cf. also J. S. Furnivall, 'Notes on the history of Hanthawaddy', *JBRS*, IV, 1, 1914, 46, from which is probably derived the statement in D. G. E. Hall, *Burma*, 1950, 34–5, that the whole kingdom consisted of 32 districts. Phayre is silent on this point.
3 *Sudhammavatīrājāvaṁsa*; *Sīharājādhirājāvaṁsa*, ed. Phra Candakanta, Pak Lat, 1910 (hereafter cited as *SR*), 354, 398. Usually known as *Rājādhirāj*, this is the Mon original from which the better-known Burmese version, *Razadirit ayedawbon*, was made.

4 Face A, ll. 18–19, 70–1. I am indebted to U Tin Hla Thaw for bringing this inscription to my notice and for providing readings.
5 James Low reported that Ye and Lamaing formed a separate province, subordinate to Tavoy: cf. 'History of Tennasserim', *JRAS*, First Series, II, 1835, 251; report on Tenasserim in the Calcutta *Gazette*, 2 March 1826, reproduced in H. H. Wilson, *Documents illustrative of the Burmese war*, Calcutta, 1827, liii–liv. But the land roll of 1766 includes these districts in Martaban.
6 (Hanthawaddy land roll) J. S. Furnivall (ed. and tr.), 'Some historical documents . . .', *JBRS*, VI, 3, 1916, 214. References to the Martaban roll are based on the present author's transcript of a MS in the possession of the Librarian of the Mon Library, Moulmein.
7 Wilson, op. cit., xliv.
8 A translation of the relevant part of the text, based on MS readings by C. O. Blagden, appears in Shorto, 'The Gavampati tradition in Burma', *Dr. R. C. Majumdar felicitation volume*, Calcutta, in the press.
9 In *SR*, 51–2. The story is also recorded in the Thaton chronicle *Uppanna Sudhammawatīrājāwaṁsa-kathā* (ibid., 13–14).
10 *SR*, 319. In the *Glass Palace Chronicle* (tr. Pe Maung Tin and G. H. Luce, 1923, 78, 79) the number is given as 32. The Thaton chronicle (*SR*, 25) allots Manuhaw 30, while *Gawampati* gives this number to the last 19 kings (ibid., 61). Doubtless these figures are an approximation, by authors who failed to take the allusion; does the same apply to the figures of 30 districts subject to Martaban and 30 up-country districts quoted on p. 572?
11 *Epigraphia Birmanica*, III, Pt. 2.
12 *JBRS*, VI, 3, 1916, 214.
13 J. S. Furnivall (ed. and tr.), 'The history of Syriam', *JBRS*, V, 1915, 7, 56, 144. The last passage is mistranslated and should be compared with the text on pp. 133–4.
14 cf. p. 584 below.
15 *Arthaśāstra*, II, 4. There are traces also in Burma of the oval or round 'Fu-nan' city which further east preceded a square 'Khmer' type. A ramparted enclosure at Wagaru, Amherst district, usually identified with the old *myo*, is of this kind, while the legendary account of the foundation of Pegu describes Indra laying out the circuit with a rope attached to an *indakhīla* pillar which became the symbolic Meru at the centre of the city. Later the *indakhīlā*, like the Burmese *mawgun taing*, were placed at the 12 gates.
16 Bayinnaung's Pegu, with 20 gates, was an exception.
17 Martaban land roll. The enclosure in 1766 was much as shown on Low's plan in the *Tenasserim atlas* published in Calcutta in 1826, except that it excluded the Myatheindan pagoda.
18 *Outline of Burmese history*, Calcutta, 1929, ch. ix.
19 MS list of officers and fiefs appended to the Martaban land roll.
20 *Nidāna ārambhakathā*, in *Nidāna Rāmādhipatikathā*, ed. Phra Candakanta, Pak Lat, 1912 (hereafter cited as *NR*), 13; *Gawampati*, in *SR*, 61.
21 *Travels of Fray Sebastien Manrique*, I (Hakluyt Society, Second Series, LIX), Oxford, 1927, 365–78.
22 *Rājādhirāj*, in *SR*, 158–9.
23 Inscription published in *RSASB*, 1939–40, 23–4.
24 Wilson, op. cit., liv.
25 Taking *gna kyāk* 'queen' as a calque on *mahādevī*. The word *gna* does not occur outside these two phrases.
26 *SR*, 188.
27 *Hsin-t'ang-shu*, ch. 222C. I am indebted to Professor D. C. Twitchett for a discussion

of this text, which is summarized in G. H. Luce, 'The ancient Pyu', *JBRS*, XXVII, 3, 1937, 250.

28 Luce, op. cit., 243–4; G. Cœdès, *Les états hindouisés d'Indochine et d'Indonésie*, Paris, 1948, 151.

29 *Glass Palace Chronicle*, 14.

30 'Weltbild und Bauform in Südostasien', *Wiener Beiträge zur Kunst- und Kulturgeschichte Asiens*, IV, 1930, 48–50.

31 Chit Maung, *Shuginthaya Shan pyihma*, Rangoon, n.d., 6.

32 J. G. Scott and J. P. Hardiman, *Gazetteer of Upper Burma and the Shan States*, II, 1, Rangoon, 1901, 373–5.

33 'Oudheidkundige opmerkingen', *BTLV*, LXXIV, 1918, p. 149, n. 1.

34 *Hindoe-javaansche geschiedenis*, The Hague, 1926, 161.

35 B. Schrieke, *Indonesian sociological studies*, II, The Hague/Bandung, 1957, 222, citing F. de Haan, *Priangan*, Batavia, 1910–12, III, 200.

36 *Mhv.* 25.7 ff., 55, 75; *The legend of the topes*, tr. Bimala Churn Law, Calcutta, 1945, 60–2.

37 . . . la floraison . . . des systèmes à cinq et à neuf unités dans le monde indochinois (centre + 4/8 unités environnantes), et par système j'entends aussi bien des structures sociales que des constructions religieuses' ('Notes sur la claustration villageoise dans l'Asie du Sud-Est', *JA*, CCXLV, 2, 1957, 204).

38 P. E. de Josselin de Jong, *Minangkabau and Negri Sembilan*, Leiden, 1951, 99, 105–6.

39 Schrieke, op. cit., II, book 2, ch. iii, sec. 1, esp. pp. 178 ff.

40 ibid., 161.

41 C. C. Berg, 'De geschiedenis van pril Majapahit', *Indonesië*, IV, 1950–1, 493–4; Schrieke, op. cit., II, 15.

42 Schrieke, op. cit., II, 16 ff., and book 1, ch. ii, n. 16.

43 'De oorsprong van het javaansche begrip Montjå-pat . . .', *Verslagen en Mededeelingen der Kon. Akad. v. Wetenschappen*, Afd. Letterkunde, 5de Reeks, III, 1917, 6–44.

44 De Josselin de Jong, op. cit., 106, citing C. van Vollenhoven, *Het adatrecht van Nederlands-Indië*, I, Leiden, 1918, 258–9.

45 Mrs. L. Milne and W. W. Cochrane, *Shans at home*, home, London, 1910, 131.

46 Winstedt and Wilkinson, *JMBRAS*, XII, 1, 1934, 137 ff.; Schrieke, op. cit., II, esp. pp. 164–8.

47 *The Golden Khersonese*, Kuala Lumpur, 1961, 17–30, 286, 292.

48 'History of Syriam', *JBRS*, V, 1915, p. 146 and n. 63.

49 op. cit., 148–51.

50 Is there an echo of this phraseology in the saying in *Rājādhirāj* (*SR*, 406) that Ava 'is at the end of the road, you might say it was the porch (*muk*) of Hanthawaddy'?

51 De Josselin de Jong, op. cit., 166.

52 G. E. Gerini, 'Historical retrospect of Junkceylon island', *JSS*, II, 2, 1905, 191–2.

53 *JBRS*, V, 1915, 142.

54 E. R. Leach, 'The frontiers of "Burma" ', *Comparative Studies in Society and History*, III, 1, 1960, 60–1. An earlier Shan federation was the Nine Provinces of Maw, mentioned in the *Glass Palace Chronicle*, 83, 84–5, 96.

55 Martaban land roll; *SR*, 37–44.

56 *NR*, 28.

57 cf. R. Halliday, *The Talaings*, Rangoon, 1917, 2–3; J. A. Stewart, 'The song of the Three Mons', *BSOS*, IX, 1, 1937, 33–9. In references in early Mon inscriptions to 'the men of the four *kirkūl* (descent-groups)' in Pagan, the key word has customarily been translated as 'castes'; it might with some plausibility be rendered 'clans'. There are totemic clans among the MonKhmer-speaking Lamet: K. G. Isikowitz, *Lamet* (Etnologiska Studier, 17), Göteborg, 1951, 85 ff.

58 For this conception of kingship cf. Shorto, 'A Mon Genealogy of kings . . .', *Historians of South East Asia*, ed. D. G. E. Hall, 1961, 68, 70.

59 op. cit., 63–4.

60 *'amba goḥ das nor 'ādiccawaṅsa | 'ambo' goḥ das nor waṅsa tuṁ'āy ma tāw pḍey taṅ dūñ* (*Epigraphia Birmanica*, 1, 2, No. VI, 23–5). This reading is confirmed by the corresponding Pali passage, No. VIII, B 16: *veḷubabbaṇṇajā* (sc. *veḷu-pabb'-aṇḍa-jā* !) *mātā | pitā ādiccavaṅsajo*.

61 cf. Gerini, loc. cit.

62 Shway Yoe, *The Burman: his life and notions*, 1927 ed., 478, 484.

63 *Shu king*, II, i, 3 (tr. James Legge, Sacred Books of the East, III, Oxford, 1879, 39–40).

64 *ARASI*, 1902–3, 97.

65 *NR*, 47–8.

66 Shorto, 'The Gavampati cult . . .', *Dr. R. C. Majumdar felicitation volume*.

95

BUDDHIST LAW ACCORDING TO THE THERAVĀDA-*VINAYA*

A survey of theory and practice

Oskar Von Hinüber

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"Wait, Sāriputta, wait! The Tathāgata will know the right time. The teacher will not prescribe any rule (*sikkhāpadaṃ paññāpeti*) to his pupils, he will not recite the Pātimokha as long as no factors leading to defilement (*āsavaṭṭhānīyā dhammā*) appear in the order (Vin III 9.26–30)." This is the answer of the Buddha to Sāriputta's worries that harm may be done to the order, if no rules of conduct are prescribed in time. And Sāriputta further points out that some of the buddhas of the past neglected this very duty with disasterous results: Their teaching suffered a quick decay and an early disappearance.

This passage underlines three important points: first, the significance of Buddhist ecclesiastical law. For without *vinaya* there is no order (*saṃgha*), and without the community of monks there is no Buddhism.[1] Consequently the vinaya-texts are the last ones lost, when Buddhism eventually disappears.[2] Secondly, the rules of conduct must be promulgated by the Buddha himself. He is the only law giver, and thus all rules, to which every single monk has to obey, are thought to go back to the Buddha. The third point is that the rules are prescribed only after an offence has been committed. Thus rules are derived from experience and based on the practical need to avoid certain forms of behavior in future. This means at the same time that the cause for a rule is always due to the wrong behavior of a certain person,[3] and consequently there is no existent system of Buddhist law.

The arrangement of texts in the Theravāda canon underlines the importance of Buddhist law, for it is contained in the first part of the Tipiṭaka, the "basket of the discipline" (Vinaya-piṭaka) followed by the "basket of the teaching" (Sutta-piṭaka). This sequence is found already in the well-known account of the first council held at Rājagaha (Rājagṛha) immediately after the death of the Buddha according to the Buddhist tradition. This account, which forms an appendix to the Vinaya-piṭaka (Vin II 286.16–287.28), mentions several texts arranged in the

same way as the contents of the Tipiṭaka described by Buddhaghosa in his commentaries in the 5th century C.E.[4] There, of course, the third part of the canon, which is considerably later than first two parts, namely the "basket of things relating to the teaching" (Abhidhamma-piṭaka) has been added.

In spite of the prominence of texts containing Buddhist ecclesiastical law, they seem to have been formulated somewhat later than the Sutta – texts.[5] At any rate, law always occupied the first place in the hierarchy of texts, even in the division and arrangement preceding the Tipiṭaka; the "nine parts" (*navaṅga*) of the teaching[6] begin with sutta, that is, with the Pātimokkha(-sutta). This text, called either Pātimokkha or simply Sutta in the Tipiṭaka, and Pātimokkhasutta in post-canonical times[7] is the very core of Buddhist law.

The Pātimokkhasutta contains 227 rules in the Theravāda tradition and slightly different numbers in other extant *vinaya* traditions.[8] These rules are arranged according to the gravity of the respective offense.

A transgression of any of the first four rules leads to the irrevocable expulsion from the order. This is why these rules are called *pārājika* "relating to expulsion."[9] The first three rules deal with a breach of chastity (*methunadhamma[pārājika]*, Vin II 286.25; Sp 516.2; 1393. 24; *methunapārājika*, Sp 1382.24), with stealing (*adinnādāna [pārājika]*, Vin II 286.32; Sp 303.18; 1393.25 "taking what has not been given"), and murder (*manussaviggaha [pārājika]*, Vin II 286.37; Sp 476.7; 768.22; 1393.25 "species 'man' ") respectively. These are immediately obvious offenses, which one might find in any law code. The fourth and last one of this group, on the other hand, needs some explication. It deals with monks, who make the false claim to possess supernatural powers (*uttarimanussadhamma*, Vin II 287.5; Sp 480.22 "things superhuman"). At first glance it might seem rather surprising that this claim could result in the expulsion from the order. This draws attention to the high importance given to meditative pratices, which, according to the belief of the time of early Buddhism, would ultimately lead to the acquisition of supernatural, magical powers. Obviously some safeguard was needed against false ascetics in the order, who might do considerable damage to the Buddhist order by shaking the faith of the lay community, on which the Buddhists depended.[10]

While the name given to the first group of offenses is easily understood, the designation of the second group comprising 13 offenses called Saṃghādisesa has been discussed repeatedly without any convincing result so far.[11] According to the Theravāda exegetical tradition the word means "(an offense, which is atoned by seeking) the order (*saṃgha*) at the beginning and at the end" (*saṃgho ādimhi c'eva sese ca icchitabbo assa*, Sp 522.3=Kkh 35.20 quoted Sadd 791.26). This tentative "etymological" translation, which would not be possible on the basis of the form of the name as used in other Vinaya schools, means that the length of the punishment, which is a temporary expulsion from the order, has to be determined by the assembly of monks.[12] Though the pertinent procedure has been described at great length in a later part of the Vinaya,[13] it is not fully understood in every detail as yet.

Again the first five offenses relate to sexual misbehavior: Losing semen otherwise than while sleeping, touching a woman, making a sexual remark, trying to seduce a women, or acting as a matchmaker. The next offenses Saṃghādisesa VI and VII concern the compound (*vatthu*) for building either a cell for a single monk (*kuṭi*), or a "great" monastery (*mahallaka vihāra*). This has to be commissioned by the order. The construction of the building itself is the topic of a later rule, Pācittiya XIX. The rules Saṃghādisesa VIII–XII relate to inner conflicts of the order. Among them is the famous one on "splitting the order" (*saṃghabheda*), Saṃghādisesa X.[14] The last rule regulates certain misbehavior of monks towards laymen.

Both offenses of the third group called "undetermined" (*aniyata*) relate to sexual misbehavior of a monk, who stays together with a woman either in an open place or under one roof. Depending on his actions he may be liable to either Pārājika I, Saṃghādisesa II–V or Pācittiya XLIV, XLV. It is legally interesting that the monk is considered guilty, if a trustworthy laywoman (*saddheyyavacasā upāsikā*) who is the very woman involved accuses him. Following the Pātimokkha, no further evidence is needed. The early commentary, however, the *Suttavibhaṅga* adds (and thus at the same time mitigates the rule) that it is necessary, too, that the monk does not deny having committed the respective offense.

Here we find one of the basic principles of early Buddhist law as laid down in the Pātimokkha: that the monk involved has to admit his intention to commit an offense. Consequently the moral standards of the monks are supposed to be very high. Speaking the truth is taken more or less for granted here as in Brahmanical tradition, where it is thought that brahmins speak the truth by their very nature. Given the high esteem for truth necessarily found in oral cultures such as early Buddhism or that the Veda, it is surprising that telling a lie is considered only as a Pācittiya offense (see page 6).

The fourth group of offenses comprises the largest number, altogether 122 divided into two groups: 30 rules concerning "expiation by giving up (something)" (*nissaggiya pācittiya*) and 92 rules called "pure expiation" (*suddha pācittiya*), because some ecclesiastical punishment is imposed.

The 30 Nissaggiya rules are of particular interest as they shed some light on the property a monk was allowed to hold. These rules concerning property are divided into three sets of ten rules. The first deals with robes, the second with mats and material used to make them, and includes the important Nissaggiyas XVIII and XIX forbidding trade and the possession of any "gold or silver," i.e. money (*jātarūparajataṃ*, Vin III 237.36**), to which the *Suttavibhaṅga* gives a farsighted explanation: "or whatever is used (*ye vohāraṃ gacchanti*, Vin III 238.3)" thus including even paper money, if not credit cards.

In spite of this rule monks did own the financial means even to build monasteries at their own expense (*attano dhanena*, Vin IV 48. 21) as it is said in the commentary to Pācittiya XIX. It is not clear from the Vinaya-piṭaka how this was handled. Probably a layman attached to the monasteries managed the

finances owned by the monks. This rule is one, if not the, earliest reference to "riches" in the possession of individual monks. At the time of the *Samantapāsādikā* it was usual that monks controlled their financial means. This is shown by his liability to pay damages in case any property belonging to the order was lost through his negligence.[15]

The third and last set of ten Nissaggiyas deals with the alms bowl and miscellaneous items such as medicine or the forbidden appropriation of things given to the whole saṃgha (*saṃghika lābha*) by an individual monk.

The "pure" Pācittiyas comprise 92 rules in the Theravāda-Pātimokkha and 90 in the Sarvāstivāda-Prātimokṣasūtra. The latter number seems to be the original one, for a few Pācittiyas have been split into two rules by the Theravādins or are counted in such a way, giving rise to some doubt about their originality. The initial arrangement of the rules in groups of ten has thus been obscured somewhat. The groups themselves are named after the first rule in a group.[16]

The consequences of transgressing a Pācittiya are not clear. The name of this group of offenses, which has been borrowed from Vedic ritual language,[17] points to some kind of atonement (*prāyaścitta: pācittiya*), but no further details seem to be given in the legal texts of Theravāda.[18]

It may be sufficient to mention only a few of these offenses as examples. The very first rule concerns telling lies, and therefore is again one of the universal rules like Pārājika I–III. Here again the Buddhist law is near to concepts of the Veda. For the Vedic Dharmasūtras teach the same, e.g. *ahiṃsā satyam astainyam / maithunasya ca varjanaṃ*, Baudhāyana 2.18.2 "non-violence, truth, not stealing, and avoiding sexual intercourse." Even the formulation of this Pācittiya shows that it is has been taken over by the Buddhists from some earlier source because instead of the typical Buddhist wording,[19] for which there is no correspondence in Vedic literature: "if a monk . . . (should do this or that) . . ." (*yo pana bhikkhu . . .*), a different formula is applied here: "if there is a conscious lie, it is an offense requiring expiation" (*sampajānamusāvāde pācittiyaṃ*, Vin IV 2.14**).

At the same time this wording is much simpler than the usually very careful, if at times somewhat clumsy, formulation of rules in the Pātimokkha: "Whatever monk should intentionally deprive a being of the class 'human' of life or should seek somebody who brings the knife to him (i.e. to the man to be killed), or should praise death, or should incite (someone) to death saying: 'Hello there, my man, of what use to you is this evil, difficult life? Death is better for you than life,' or should deliberately and purposefully in various ways praise death or should incite anyone to death, he is also liable to expulsion and not in communion," Pārājika III (Vin III 73.10**–16**, translation after I. B. Horner). Obviously this is an attempt to describe all possible conditions leading to a certain offense in a very comprehensive way. The struggle with the language and a certain awkwardness of the syntax underline the fact that the authors were not accustomed to this kind of legal formulation when they attempted to achieve something new and innovative in the history of Indian law. The rules laid down

in the Pātimokkha seem to be the first attempt at a truly legal description of the facts in India.

It is only in the Pācittiya that violating living beings (*ahiṃsā*) other than man is referred to: Pācittiya XI concerns plants (*bhūtagāma*, Vin IV 34.33**), and much later in Pācittiya LXI animals (*pāṇa*, Vin IV 124.25**) are mentioned. In contrast to murder both these offenses do not result in expulsion from the order, not even to a temporary suspension of the rights of a monk, as does a Saṃghādisesa offense. This underlines the superior position held by man, who is considered to stand high above any other living being. This remarkable feature of Buddhist anthropology is also mirrored by the Dhamma: only men are able to become buddhas.

The last rule to be mentioned of this group is Pācittiya XIX concerning the erection of a monastery (*mahallaka vihāra*), already referred to above in connection with Saṃghādisesa VI and VII. This example suggests that rules once included into the Pātimokkha can never be dropped. The building described here seems to be a very simple, if not primitive, type of monastery. As soon as the monasteries developed into larger complexes, it became impossible to follow or even use this rule any longer. As a consequence the exact meaning seems to have been forgotten very soon, already at the time when the old commentary, the *Suttavibhaṅga*, was formulated because the explanations given here clearly show that many details were no longer fully understood. The same fact can be deduced from the attempts to create a comprehensible text by reformulating the rule, as did some of those schools who use Sanskrit in their Prātimokṣasūtras. However, the exact meaning of this rule remains obscure.[20]

Although evidently obsolete for a long period, perhaps even for more than two millennia, this rule has been kept because it was considered impossible to change or update the Pātimokkha promulgated by the Buddha himself: *suttaṃ hi appaṭivattiyaṃ*, Sp 231.27 "for it is impossible to reverse the (Pātimokkha)sutta." This opinion cannot have prevailed at all times, because the Pātimokkha as we have it today, must have been formulated by the order at an early date, and not by the Buddha. Very soon, however, in the history of Buddhism the assembly of monks decided not to touch the text anymore. The refusal to change even the "minor rules" (*khuddānukhuddakāni sikkhāpadāni*)[21] hinted at in the pertinent discussion at the council of Rājagaha (Rājagṛha) (Vin II 287.29–288.15, cf. DN II 154.15ff.) could indicate the end of the freedom for any changes of the Pātimokkha.[22]

A set of only four rules follows this large group. As these offenses have to be pointed out only by the monk who has committed them, they are named Pāṭidesaniya "pertaining to confession."

The final group of rules in the Pātimokkha comprises 75 items and relates to appropriate behaviour (which would also apply to any layman) such as walking around properly dressed, avoiding talking while eating, etc. They are called Sekkhiya "pertaining to training." All these rules are formulated in the same way: "I shall not put my hand into my mouth while I am eating. This (rule) per-

taining to training must be kept," Sekkhiya XLII (Vin IV 195.10**). The contents, arrangement, and number of these rules, which contain an interesting, though difficult, and probably popular vocabulary, sometimes vary considerably from one Vinaya school to another. In fact, this set seems to be a later addition[23] because the Pātimokkha is occasionally referred to in the canon as "These more then 150 rules, which are recited every half month—I cannot keep them" (*sādhikaṃ idaṃ bhante diyaḍ-ḍhasikkhāpadasataṃ anvaddhamāsaṃ uddesaṃ āgacchati nāhaṃ bhante ettha sakkomi sik-khituṃ*, AN I 230.17–19 etc., Mp II 346.29). The figure 150 only makes sense, if the 75 Sekkhiya-rules are excluded: 4 Pārājika + 13 Saṃghādisesa + 2 Aniyata + 30 Nissaggiya + 92 (originally 90) Pācittiya +4 Pātidesanīya = 145 (143), to which the seven "methods to settle a dispute" (*adhikaraṇasamatha*) are added at the very end of the Pātimokkha. These seven methods are only enumerated without any further explanation and are found in the second part of the Vinaya-piṭaka, the *Khandhaka*, divided into twenty chapters called "large section," *Mahāvagga*, and "small section," *Cullavagga* respectively.

The first part of the Vinaya-piṭaka, the Pātimokkha briefly described so far, has been built around the rules for the behaviour of individual monks and nuns. This section of the Vinaya-piṭaka is called *Suttavibhaṅga* "explanation of the (Pātimokkha-)sutta."[24] Each single rule is embedded in a text of identical structure throughout the whole *Suttavibhaṅga* comprising four parts, the names of which are found in the account of the first council, and again, though slightly different, in the much later commentary on the Vinaya-piṭaka, the *Samantapāsādikā*.

According to the Theravāda tradition, the first two Piṭakas were recited and thus recognized as canonical at the first council immediately after the death of the Buddha. When Mahākassapa as the leading monk asked Upāli the most learned monk in *vinaya* to recite the texts comprising Buddhist law, he did so by inquiring about the place (*nidāna*, Vin II 286.27), where a rule was prescribed, about the person concerned (*puggala*, Vin II 286.27), and about the topic of the rule (*vatthu*, Vin II 286.27).[25] These three points, which constitute the introductory story to a rule, are also designated as a whole as *vatthu* (Sp 29.16) "topic, introductory matter" in the commentary. These stories have been invented much later than the rules proper were formulated, for they are at times based on gross misunderstandings of the contents of a given prescription.[26]

The introduction regularly ends with the sentence: "you should, monks, recite this precept (*sikkhāpada*)." The precepts themselves are called *paññatti* (Vin II 286.28) in the Vinaya-piṭaka in contrast to *mātikā* (Sp 29.16) in its commentary. Sometimes the content of a precept as originally formulated is considered incomplete and has to be supplemented. After the Buddha had ruled: "if a monk should take something away that has not been given, which is considered as theft . . ." certain monks held the view that "refers to inhabited places, not to uninhabited places" (. . . *bhagavatā sikkhāpadaṃ paññattaṃ tañ ca kho gāme no araññe*, Vin III 45.30). Consequently the Buddha had to specify the rule as "if a

monk should take something away that has not been given from an inhabitated or from an uninhabitated place (*gāmā vā araññā vā*, Vin III 46.16**), which is considered as theft. . . ." This method of expanding a definition is called "secondary prescription" (*anupaññatti*, Vin II 286.28). The commentary further explains that these specifications may be used either to strengthen (*daḷhataraṃ karontī*, Sp 228.5)[27] or to loosen (*sithilaṃ karontī*, Sp 227.34) a rule depending on whether a precept is based on what is considered as an act or a behavior "to be avoided by all" (*lokavajja*) such as theft or murder, or "to be avoided because of a precept" (*paṇṇattivajja*, Sp 228.1) such as Pācittiya XXXIIff. "eating as a group of monks," which is an offense only for monks. In this latter case additional rules mitigate the original one by giving exceptions, in the case of Pācittiya XXXIIff., no less than seven times (!).

In contrast to this opinion found in the *Samantapāsādikā*, the commentary on the Pātimokkha, the *Khaṅkhāvitaraṇī*, gives a slightly different explanation to *anupaññatti*. Without referring to "avoided by all" and "avoided because of a precept," the *Khaṅkhāvitaraṇī* states that an additional rule may either "cause an offense" (*āpattikara*, Kkh 24.37) as in Pācittiya XII, or "restrict an offense" (*anāpattikara*, Kkh 24.38) such as the addition "if not in sleep" (*aññatra supinantā*, Kkh 24.38 = Von III 112.17**), which restricts the "consciously losing semen . . . is a Saṃghādisesa," referring to Saṃghādisesa I, or, as a third, possibility support an offense (*āpattiupatthambhakara*, Kkh 24.39), for which Pārājika II concerning theft as discussed above is quoted.

This difference of opinion on *anupaññatti* separates both commentaries and consequently is an interesting hint at the development of juridical thinking in Theravāda, a field that still awaits investigation.

In contrast to the account of the first council, the *Samantapāsādikā*, which does not know *anupaññatti* as a separate entry in the division of the *Suttavibhaṅga*, next mentions the "commentary explaining individual words" (*padabhājaniya*, Sp 29.16). This is the technical term for the explanation of the Pātimokkha found in the *Suttavibhaṅga* based on a way of legal thinking much more developed than in the Pātimokkha proper. Therefore it seems rather significant that no mention is made of this part of the *Suttavibhaṅga* in the account of the first council since this might indicate that this account dates back to a time when the *padabhājaniya* did not yet exist.

Next the offense proper (*āpatti*, Vin II 286.28; Sp 29.17: so read with note 7) is mentioned that is Pārājika, Saṃghādisesa, etc., and only in the commentary does a further technical term follow, the "intermediate offense" (*antarāpatti*, Sp 29.17).[28] This designates a somewhat lighter form of the offense than the one contained in the rule itself, and it applies when only part of the conditions are met that would normally result in committing a certain offense. For example, if a monk intends to steal an object, he may secure the help of a second person (*dutiya*), fetch a basket to carry the object, etc. In spite of his intention to steal, it is only "wrong doing" (*dukkaṭa*) if he does not go beyond these preparations. Even if he touches the object or starts shaking it (*phandāpeti*), it is still one of the

stages defined as *antarāpatti*, but now, if he shakes it, it is already a "grave offense" (*thullaccaya*). Only if the monk actually moves the object (*thānā cāveti*), is the offense (*āpatti*) defined as theft (*adinnādāna*, Vin III 47.34–48.4).[29]

At the end of this casuistry a final section is added giving the conditions of freedom from punishment (*anāpatti*). The monk, who was the first to commit the relevant offense (*ādikammika* "the first committer"), is never liable to punishment. Thus the Roman rule *nullum crimen sine lege* was formulated here at a rather early date in India.[30] The same applies for the concept of penal responsibility; mentally disturbed monks (*ummattaka*) are not punishable. This is the framework for all precepts from Pārājika to Sekkhiya with the exception, of course, of the "methods to settle a dispute" at the very end of the Pātimokkha.

The individual groups of offenses are separated from each other by very short texts, which are used only for the recitation of the Pātimokkha once a fortnight. These texts state, for example, that the 30 Nissaggiya rules have been recited, that no monk has violated them, and that the assembly is consequently pure, which means that no one has committed an offense.

An old paragraph shows how the Pāttimokkhasutta was recited: All monks of a certain area (*gāmakkhetta* and not *sīmā*!) assemble and ask a monk, who knows the text by heart (*yassa-vattati, taṃ ajjhesāma*). While the text is recited (*bhaññamāne*), an offense committed is dealt with according to law (*yathādhammaṃ yathāsatthaṃ*) (MN III 10.8–16). Thus it is the very purpose of the recitation to secure the ritual purity of the order by making sure that all precepts contained in the Pātimokkha have been kept.

This rather broad outline of the *Suttavibhaṅga* may be sufficient, although only the first part, the "great commentary" (*mahāvibhaṅga*) has been taken into consideration so far. The structure of the much shorter second part, the "nuns' commentary" (*bhikkhunīvibhaṅga*) is basically the same. The text is neither read nor studied frequently, partly because the order of nuns ceased to exist long ago, as it is well known.[31] It should be noted, however, that part of the rules for monks are also valid for nuns, as "common (*sādhāraṇa*) precepts," such as the four Pārājikas.[32] Thus there are altogether eight Pārājikas for nuns, although only the four additional rules are actually given in the Bhikkhunī-Pātimokkha. In a more complicated way the 17 Saṃghādisesa for nuns are put together: 10 are specific for nuns, and Saṃghādisesa V, VIII, IX of the monks are to be inserted after Saṃghādisesa VI of the nuns, and Saṃghādisesa X–XIII of the monks are inserted between Saṃghādisesa IX and X of the nuns according to the commentary (Sp 915.34–38).

As the rules valid for nuns are much stricter than those for the monks, there is usually a higher number of precepts to be kept: 8 Pārājikas, 17 Saṃghādisesas, 30 Nissaggiyas, 176 Pācittiyas, and 8 Pāṭidesaniyas. Together with the number of Nissaggiyas, those of the Sekkhiyas and of the Adhikaraṇasamathas are identical for both monks and nuns. The rules for nuns are no longer recited. The introduction to the recitation of the Pātimokkha explicitly states: "The instruction of nuns does not take place, as they do not exist any longer."[33]

In the same way the *Suttavibhaṅga* is built around the Pātimokkha, the structure of the second part of the Vinaya, the "great" and the "small sections" (*Mahāvagga, Cullavagga*) is, at least to some extent, determined by "legal formulas" (*kammavācā*). These formulas have to be recited to transact legal business in the order, such as appointing a certain monk to be in charge of the distribution of cells and beddings to monks arriving at a monastery, or to instruct the nuns, etc.[34] The admission of new members to the order is also regulated by *kammavācās*. The wording of these formulas is fixed exactly, down to the correct pronounciation of single sounds; for phonetic mistakes such as pronouncing a labial instead of a nasal in *saṃgham* versus *saṃghaṃ* would result in the invalidity of a legal act.[35] This dates back to the time of early Buddhism and to the days of orality when the spoken word was considered valid. No documents were known either to confirm an ordination or to be used as evidence in Buddhist law.

While the *Suttavibhaṅga* regulates the behaviour of individual monks, the *Khandhaka* describes the procedures to be transacted by the order. The first and longest chapter recalls the foundation of the Buddhist saṃgha and deals with the rules for the lower (*pabbajjā*) and higher ordination (*upasampadā*). The following chapters comprise the rules for the recitation of the Pātimokkha, for spending the rainy season, etc. There are altogether ten *Khandhakas*, which form the *Mahāvagga*.

Between these ten and the second set of ten *Khandhaka* s found in the *Cullavagga*, which are enlarged by the two appendices containing the accounts of the first two councils held at Rājagaha (Rājagṛha) and Vesālī (Vaiśālī) respectively, there is no clear cut division. The only superficial difference may be seen in the fact that legal matters become increasingly involved in the *Cullavagga*. Thus far not much efford has been made to investigate and to understand the legal system described in these parts of the Vinaya.

The first three chapters of the *Cullavagga*, the *kamma-kkhandhaka* "section on legal acts," *parivāsa-kkhandhaka* "section on probation," and *samuccaya-kkhandhaka* "section on miscellaneous matters" deal mainly with procedures resulting from Saṃghādisesa offenses. If a monk has committed such an offense, he loses certain rights for a certain period, after which he can become a full member of the order again. This matter can get rather complicated if a monk commits a second, or third offense while on probation,[36] and in addition conceals them for a certain period, which in itself results in a particular form of punishment. Consequently the rules given in the relevant chapters are quite involved, and at times; it is a bit difficult not to get confused when reading these texts.

We are quite well informed about the consequences of a Saṃghādisesa. It is, however, not entirely clear how the procedures described in *Cullavagga* II and III relate to certain special cases mentioned in *Cullavagga* I. Here, five kinds of misbehavior together with five different legal procedures against them are named,[37] which, strangely enough, all result in the same consequences,[38]

although one of them "expulsion (from a place)" (*pabbājaniyakamma*, Vin II 9.29–15.28)[39] results from Saṃghādisesa XIII, while the "suspension because of the refusal to give up a wrong view" (*pāpikāya diṭṭhiyā appaṭinissagge ukkhepaniyakamma*, Vin II 25.9–28.17) relates to Pācittiya LXVIII. This, like many other problems in the Vinaya, still requires detailed investigation.

A minor point mentioned in this section deserves some attention, although it seems to be rather marginal at a first glance. When the Buddha asks Sāriputta and Moggallāna to drive away the Assajipunabbasuka monks from the Kiṭāgiri, that is, to execute an "expulsion from a place" (*pabbājaniyakamma*), these prominent monks are afraid to do so, because those monks are "fierce and violent" (*caṇḍā ... pharusā*, Vin II 12.34ff. = III 183. 1ff.). Therefore the Buddha recommends that Sāriputta and Moggallāna should not go alone, but take with them a large group of monks. This is one of the very few passages where the difficulties to enforce a decision are mentioned.[40]

On the whole, the Vinaya-piṭaka contains-much information on theory, e.g. the very elaborate section on the "settling a dispute" (*samatha-kkhandhaka*, Vin II 73.3–104.11, cf. MN II 247.2–250.21 with Ps IV 42.13–46.25), which is a long and extremely detailed explanation of the corresponding key words found at the end of the Pātimokkha as mentioned above. Unfortunately, however, it is not explicitly stated, in which particular case which method for settling the respective dispute is to be applied. Nowhere is an example given for the entire procedure, beginning with the committing of an offense and describing the complete hearing within the order, with the final verdict and the eventual punishment. Even the commentary is not very informative in this respect, although a few additional details are provided, which will be discussed below.

The tenth and last section of the *Cullavagga* proper dealing with legal matters contains the account of the foundation of the order of nuns. Thus the structure of the *Khandhaka* corresponds in this respect to the *Suttavibhaṅga*, which is concluded by the *Bhikkhunīvibhaṅga*.

The very last and probably latest part of the part of the Vinya-piṭaka is an elaborate and difficult handbook called *Parivāra* on how to handle the material accumulated in *Suttavibhaṅga* and *Khandhaka*. It is quite evident that this text is a compilation of separate, occasionally over-lapping short texts, sometimes in verse, mostly in prose. It is only in the *Parivāra* that some kind of hearing is introduced and briefly discussed in chapter X, the "further summary in verses" (*aparaṃ gāthāsṃgaṇikaṃ*, Vin V 158.2–159.24) and chapter XI, "section on reproof" (codana-kaṇḍa, Vin V 160.2–162.23). Three parties are named: a *codaka* "one who puts forward a reproof or accusation," a *cuditaka* "one who is reproofed or accused," and an *anuvijjhaka*[41] "an investigator." The latter has to be impartial and should be careful not to arouse anger in either party, who, in their turn, have to speak the truth etc. Again nothing is said about the contents of such a hearing in the Vinaya-piṭaka itself. It is only the commentary that offers some information. For here the "investigator" (*anuvijjhaka*) is defined as an "expert in law" (*vinayadhara*), who sits to decide a case (*adhikaraṇa*)[42] that has

been brought before the assembly of monks (*saṃghamajjhe otiṇṇaṃ*), Sp 1360.3ff.).

Thus only comparatively late legal literature yields some, though mostly somewhat vague, information on the actual working of Buddhist law in practice. This of course is a problem faced by all students of Indian law. For just as the Vinaya-piṭaka describes theory rather than practice, so do the Dharmaśāstras. Information about the practical application of Hindu law in court is rarely referred to, and mostly found in literature outside the realm of Dharmaśāstra such as Sanskrit drama, where the well known *Mṛcchakaṭika* may serve as an example.[43]

Information on Buddhist law as laid down in the Vinaya-piṭaka, on the other hand, can be gathered from random references in the commentaries (*aṭṭakathā*) on the Vinaya-piṭaka such as the *Samantapāsādikā* or the *Kaṅkhāvitaraṇī*, a commentary on the Pātimokkha, or even in commentaries on other parts of the Tipiṭaka. As the vast commentarial literature has not been made easily accessible by adequate indices, the following examples are by no means the result of a systematic search. Although better and clearer evidence still hidden somewhere in the *Aṭṭhakathā* may surface in the future, it may be useful to translate some relevant passages for easier reference.

Resuming what has been stated repeatedly, though briefly in the *Parivāra*, the *Samantapāsādikā* describes in some detail how a legal expert (*vinayadhara*, cf. Vin I 169.7) has to act with respect to persons who bring a case before him and with respect to the Vinaya-rules he is going to use.[44] Once a case (*vatthu*) is brought before the assembly of monks (*saṃghamajjhe*, cf. *vinayadharo saṅghamajjhe pucchati*, Kkh 89.23), plaintiff (*codaka*) and accused (*cuditaka*) have to be asked, whether they are going to accept the final verdict (*vinicchayena tuṭṭhā bhavissatha*, Sp 590.1ff., cf. Vin V 224.16ff.). Only if both agree can the investigation begin.[45] In case, however, they answer "if we like it, we shall accept [the verdict]," they should be sent away to worship a stūpa, and the whole matter should be handled in a dilatory way, until both parties are worn down (*nimmada*) and apply again for a hearing. Only after having sent them away thrice should the hearing finally begin (Sp 590.4–10).

On the other hand, the assembly of monks may be unable to handle the case, because their majority is either shameless or incompetent (*alajji-*, *bāla -ussanna-*, Sp 590.10–15,′ cf. Vin V 224.19–21). In the first case, a committee has to be formed (*ubbāhikāya*, Sp 590.11, cf. Sp 1197.21–25 on Vin II 95.29).[46] In the case of incompetence, legal experts have to be invited, who are to be agreed upon by both parties (*sabhāga*, Sp 590.12, cf. Sp 1354.28–31). These have to decide according to *dhamma-vinaya-satthusāsana* "teaching-discipline-prescription of the teacher (i.e. the Buddha)" (Vin V 224.21ff.), which means following the *Samantapāsādikā* according to the "true cause" (*bhūtaṃ vatthu : dhamma*, Sp 590.15ff), to "reproof and remonstration" (*codanā, sāraṇā: vinaya*), and finally to a "correct motion and a correct proclamation"[47] (*ñattisampadā, anussāvanasampadā: satthusāsana*, Sp 590.16ff.). Thus the rather general

terms "teaching" etc. get a very technical and specific meaning in this particular Vinaya context.

When finally a group of monks capable and competent to decide the case has been established, the hearing proper can begin with the plaintiff (*codaka*) stating his case, which then has to be examined with all necessary care (*upaparikkhitvā*, Sp 590.19), before a verdict in accordance with the true facts (*bhūtena vatthunā*, Sp 590.19) is reached and made known. This has to be done in a rather simple form of a motion followed by a single proclamation (*ñattidutiya*, Vin V 220.3, cf. Sp 1395.24–32).[48] It is noteworthy that no document such as a *jayapattra* is mentioned to be issued as written proof for the winning party.[49]

Further, it is stated that an incompetent and shameless monk cannot blame another monk who is acting as a *codaka*. If he should approach the order with such an intention, his complaint has to be dismissed (*uyyojetabba*, Sp 590.26) without any hearing. On the other hand a modest but incompetent monk has to be given guidance (*nayo*, Sp 591.1) when he brings his case forward.

Once the plaintiff and the accused have stated their respective case, the legal expert has to decide without rashness (*sahasā avinicchinitvā*, Sp 235.29) and has to take the following six points into consideration: 1. the facts (*vatthu*), 2. the Pātimokkha (*mātikā*), 3. the commentary on the Pātimokkha (*padabhājaniya*), 4. "the three sections" (*tikepariccheda*),[50] 5. the "intermediate offense" (*antarāpatti*),[51] 6. the conditions, under which there is no offense (*anāpatti*) (Sp 235.22–236.22). Having considered all this and having taken all these facts and conditions as his guiding principles (*suttaṃ*, Sp 236.23), his verdict is irrefutable as if the Buddha himself had been sitting in court as a judge and had passed the verdict (*vinicchayo appativattiyo, buddhena sayaṃ nisīditvā vinicchitasadiso hoti*, Sp 236.26ff.). For the Buddha has decided many disputes himself and has given hints (*lakkhaṇa*) how legal experts should decide in future (Sp 272.2–7).[52]

Although all this advice may be of some help for a monk who has to decide a case in agreement with the Vinaya, it is still not clear how such business was really transacted. The following episode related in the *Samantapāsādikā* gives at least an impression how this could have been done:

> A certain monk in Antarasamudda took a well formed coconut, turned it, and made it into a drinking cup polished like mother-of-pearl. Then he left it behind and went to Cetiyagiri. Another monk went to Antarasamudda, stayed in the very monastery, saw the cup, took it away with the intention to steal it, and went to Cetiyagiri, too. The monk who originally owned the cup saw the other monk drinking rice-gruel and asked: "Where did you get that?"—"I brought it from Antarasamudda." He said: "This is not your property. It has been stolen," and dragged him before the assembly of monks. There they did not get a decision and went to the Mahāvihāra. There the drums were beaten (to assemble the monks). An assembly was held and the hearing (*vinicchaya*) began. The Elders, who were experts in the Vinaya, decided that it was theft.

> A member of this assembly was the Elder Godha, the Abhidhamma expert, who was at the same time an expert in the Vinaya. He spoke thus: "Where has he stolen this cup?"—"It was stolen in Antarasamudda."—"How much is its value there?"—"It is worth nothing, because coconuts are split there, their contents is eaten, and the shell is thrown away, being considered as something like wood."—"What is the value of the manual labour of the monk there?"—"A penny (*māsaka*) or even less than a penny."—"Indeed the Buddha has prescribed somewhere a Pārājika with regard to a penny (*māsaka*) or even less than a penny."—This being said there was a unanimous approval: "Excellent, excellent, well spoken, well decided!"
>
> And at that time when the king Bhātiya left the city to worship the stūpa, he heard this noise and asked: "What is it?" Having heard everything as it had happened, he had the drum beaten in the city: "As long as I live, a case decided for monks, nuns, or householders by the Elder Godha,[53] the Abhidhamma expert, is well decided. I put [persons] who do not abide by his decision under the jurisdiction of the king."
>
> (Sp 306.29–307.22)

The context of this paragraph is a long discussion on many aspects of theft, in this particular instance on the different value of an object at different places. This value again is crucial to determine the gravity of the respective theft. According to Vin III 59.14–30 (quoted Vin V 33. 23) one of the conditions resulting in a Pārājika after an object has been moved (*thānā cāveti*) is that the value of that object has to be at least five pennies (*pañcamāsako vā atireka-pañcamāsako vā*, Vin III 54.16). If the value is less than five, but more than one penny (*atirekamāsako vā ūnapañcamāsako vā*, Vin III 54.22) it is a "grave offense" (*thullaccaya*); if it is a penny or even less (*māsako vā ūnamāsako vā*, Vin III 54.27) as in the case quoted from the *Samanta-pāsādikā*, it is only "wrong doing" (*dukkaṭa*).

This story is dated by the Sinhalese king mentioned, who may be Bhātikābhaya (C.E. 38–66).[54] Two points deserve special attention. First the case is decided by a monk, who is not primarily an expert in the Vinaya, but in "philosophy," Abhidhamma. His opinion and decision is not only appreciated in this paragraph, he is quoted again thrice as an authority in different legal matters such as the following:

"Somebody decapitates someone else, who is running quickly in a battle, and the corpse continues to run. A third person causes the running corpse to fall by a blow: Who is guilty of a Pārājika? Half the Elders say the one, who interrupts the walking; the Elder Godhaka, however, the expert in Abhidhamma, says the one who has cut the head" (Sp 478.16–20).

It is remarkable that these are monks discussing the possibility of a Pārājika in a battle, perhaps not only in theory. For they might have had in mind monks in arms such as those mentioned in the *Sāsanavaṃsa* in much later times.[55]

Perhaps it is not a coincidence that monks knowledgeable in Abhidhamma were particularly apt to decide Vinaya cases, because the way of thinking in both, Buddhist philosophy and law, shows some similarities: the later may have served as a model for the former in which case the Abhidhamma is based on the application of the methods developed in juridical thinking and on material drawn from the Suttas.[56]

In contrast the Sutta experts do not seem to have enjoyed any particular reputation for their knowledge of the Vinaya,[57] as the following episode demonstrates, which at the same time shows, how a quarrel could start in the saṃgha:

> At one place an expert in the Vinaya and an expert in the Sutta were living together. Once the monk, who was an expert in the Sutta, went to the toilet and left some of the water for rinsing in the respective pot. The legal expert went to the toilet later, saw the water, left and asked the monk: "Venerable sir, did you put the water there?"—"Yes, venerable sir."—"Don't you know that this is an offense (against Vin II 222.21)?"—"No, I do not know."—"There is, venerable sir, an offense."—"If there is an offense, then I shall confess it."—"If you acted without knowing and intention, there is no offense." Consequently he (the Sutta expert) was of the opinion that his offense was no offense. The legal expert, however, told his pupils: "Although the Sutta expert has committed an offense, he does not know it." The pupils said to the pupils of the Sutta expert: "Although your teacher has committed an offense, he does not know that it is an offense." They (the pupils of the Sutta expert) went and informed their teacher. He said: "In the first place the legal expert said it is no offense, now he says it is an offense. Obviously he is telling a lie." They (the pupils of the Sutta expert) went away and said (to the pupils of the legal expert): "Your teacher is a liar." Thus the quarrel grew. Then the legal expert got the permission (from the order) and transacted the formal act of suspension (*ukkhepanīyakamma*) against (the Sutta expert), because he did not recognize an offense (according to Vin II 21.5–22.11 with Sp 1148.23–1149.10).

Here the legal expert (*vinayadhara*) draws the attention of a monk to an offense which he has inadvertently committed. In other instances legal experts are approached by monks, who seek their advice, as did a certain monk, who had joined the order in old age (*mahallako pabbajjanto*). Consequently he was unable to reach a seniority in the order corresponding to his natural age and then suffered several disadvantages when food or other goods were distributed. After having become depressed to the point of shedding tears (*assūni muñcanto*), he remembered family property (*kulasantakaṃ*) still in his possession, which he had not given up thinking: "Who knows what is going to happen?" (*ko jānāti kiṃ bhavissati*). Upon inquiry a legal expert quite unexpectedly allows the monk

to use this property he owned as a layman and which he still holds. Then that monk settles down in a village and becomes a *samaṇa-kuṭumbika* "an ascetic-householder" (Spk III 32.25–33.17). In spite of the opinion of this anonymous legal expert this status does not seem to conform to the Vinaya rules, though it was accepted in 5th century Ceylon according to the paragraph quoted.[58]

Other instances, where legal experts are approached for advice are less interesting, for it is only stated in a very general manner what is allowed and what is not (*kappiyākappiya*: Sp 872.17ff. ≠ 1375.34ff. cf. Vibh-a 474.1–6), or that they should decide a case (Ps II 95.29–96.3). It shows, however, that legal experts were much needed and probably enjoyed considerable reputation and respect.

A second interesting point is that decisions made by Godhaka extend to laypeople, as the anouncement of the king underlines. Evidently monks did also care to pronounce opinions on secular law, for the king refers explicitly to householders (*gihin*). Unfortunately it is impossible to guess what kind of legal case the king might have had in mind. It is perhaps possible to think of disputes about the ownership of land, which is decided by a monk in 18th century Burma, as discussed below.[59]

While the possible interference of monks with secular law remains somewhat obscure at present, the concern of the king with legal matters of the order is well known and relatively well documented from ancient times. The legal basis for this interference of the king is given in the third chapter of the *Mahāvagga*, which deals with the beginning of the retreat of the monks during the rainy season (*vassūpanāyika-kkhandhaka*, Vin I 137–156). As the exact date of the beginning of the rainy season is crucial for certain ceremonies to be held by the order, a calendar is needed. As is well known, however, the Buddhist calendar and presumably the one in general use at that time in India followed the lunar system, which means that the months are too short such that the calendar soon gives a date that is far too early for the first day of the rainy season. Therefore the date has to be adjusted every third year by inserting an intercalary month. This was done by order of the king, with the purpose to guarantee a modestly uniform calender within the borders of his realm. The corresponding wish of king Bimbisāra to insert a second month *āsāḷha* (June/July), and thus to postpone the first day of the rainy season is communicated to the monks.[60] On this occasion the Buddha rules: "I allow you, monks, to follow kings" (Vin I 138.35). Although referring only to matters concerning the calendar in the given context of this precept, the rule is formulated in such a way as to allow a very extensive interpretation. Whether or not this was intended from the very beginning is a matter of conjecture. In any case the commentary certainly takes this to cover a wide range: "I allow you, monks, to follow kings means: Here it is allowed to follow [kings] so that no disadvantage may happen to the monks, if the rainy season is postponed. Therefore also in other matters, if legal (*dhammika*), one has to follow [kings]. In illegal matters, however, one should not follow anybody (Sp 1068.3–7)." It is well known from the history of Buddhism that the general rule allowing the king to interfere was badly needed and rather

frequently used. Before quoting some selected examples, it may be useful to have a look at the lower jurisdiction, to which the order also had to appeal to occasionally.

The introductory story to the first Saṃghādisesa for nuns (Vin IV 223.4–224,4) offers an interesting example how the order, in this particular case, even the one of the nuns, settled disputes with laypeople. A certain layman had given some type of building (*uddosita*)[61] to the nuns. After his death his two sons inherited his property and divided it between them. That very building developed upon the son, who did not favor Buddhism. Consequently he tried to take the building away from the nuns, who in turn asked the judges (*vohārike mahāmatte*, Vin IV 223.27), whether they owned the building or not. The case is decided in favor of the nuns, because the judges are well aware of the fact that the deceased layman had donated the building to the nuns. The case, however, does not end here, but escalates, for the impious son of the pious layman starts molesting and abusing the nuns after he lost the case (*parājito*, Vin IV 224.4). Again the nuns turn to the judges. As a result the layman is fined (*daṇḍāpesuṃ*, Vin IV 224.8), but he does not leave it at that, and viciously gives land next to the building donated by his father to a "heretical" sect (*ājīvika*) and asks these Ājīvikas to molest the nuns. For that he is put in jail by the nuns. Now Buddhist laypeople start to worry about these litigious nuns: "First they took the building, then they had him fined, thirdly they had him put in jail, now they might see to it that he will be executed" (Vin IV 224.13–15). At that point the Buddha is asked and he rules that nuns are not allowed to bring a law suit against laymen (Vin IV 224.25**–28**). The technical word for "litigious(?)" used in the rule of the Pātimokkha is *ussayavādikā*, Vin IV 224.25**. This seems to have become obsolete very soon, and already the old commentary on this rule in the *Suttavibhaṅga* explains this word by the common term used in secular law for "adversary" in a law suit: *aṭṭakārikā*, Vin IV 224.30 with Sp 906.23.

At a much later date the *Samantapāsādikā* enters into a lengthy discussion on the behaviour of nuns in court, beginning with an interesting remark that a law suit is called *aṭṭa* "case," if it refers to secular law in contrast to the ecclesiastical term *adhikaraṇa* The word *aṭṭa* is defined as "what is decided by judges" (*vohārika-vinicchayo*, Sp 906.24).[62] The corresponding term used in Buddhist ecclesiastical law, on the other hand, is *adhikaraṇa* "case, dispute" (Sp 906.25). Further in contrast to a singular secular term for "adversary" (*aṭṭakāraka*) the ecclesiastical "plaintiff" (*codaka*), and "accused" (*cuditaka*) are well distinguished. While a secular "judge" is called *vohārika*, an *anuvijjhaka* decides in ecclesiastical law.[63]

This shows that both systems of the law, secular and ecclesiastical, had their own terminology, or more precisely, that the Theravāda Buddhists created their own system of legal terminology differing from the one common in India and used in the Dharmaśāstras. Moreover the Theravāda terminology and the whole legal system seems to be the superior one, as far as that can be ascertained given the present state of research.

In the same way as the terminology used in secular and Buddhist ecclesiastical law respectively is not uniform, the procedure to settle a dispute differs considerably. The secular law suit described in the commentary on the dispute between the nuns and the impious layman is fairly simple. Although it seems impossible at present to find out anything about the legal background to this description in the *Samantapāsādikā*, it is not unlikely to think of one of the Dharmaśāstras.

A hearing in secular law is simply described as: "after the evidence (*kathā*) has been heard, after the judges (*vohārika*) have reached a verdict (*vinicchaya*) and one party (*aṭṭakārika*) has been defeated (*parājita*), the hearing has come to an end (*aṭṭapariyosāna*, Sp 907.24ff.).

The commentary then continues that it is forbidden for nuns to start a law suit on their own initiative: "if a nun, when she sees the judges coming, states her evidence (*kathā*), this is wrong doing (*dukkaṭa*) for that nun" (Sp 907.9). Perhaps this means that judges (*vohārika*) could be approached any time, even when met by chance. On the other hand judges were sent to villages to administer justice,[64] and they could act on their initiative and bring persons to court (*ākaḍḍhati*): "if she goes into the presence of judges (*vohārika*) being summoned by the bailiffs (or "servants of the adversary": *aṭṭakārakamanussa*), who have come either in person or sent a messenger saying: 'Come!' . . . (Sp 908.11–13)."

The judges are not obliged to hear the evidence of both parties to reach a decision, if the case is known to them: "if the judges (*vohārika*) have heard about an ecclesiastical case (*adhikaraṇa*), which has gone through the correct procedures (*gatigata*), they may say, after they have seen the nun and her adversary (*aṭṭakāraka*): 'You need not give evidence (*kathanakicca*), we do alrready know that matter,' and they may give [their verdict] deciding (*vinicchitvā*) by themselves (Sp 907.27–30)."

This also shows how secular and ecclesiastical law interlock. The evidence given within the order (*saṃgha*) can be used immediately without further hearing. There seems to have been, however, one restriction: This was possible only, if the "correct procedure" (*gatigata*) has been followed by the order. Quite casually some important information is included about the correct procedure to be followed when a case was decided in the order. The relevant term (*gatigata*) is mentioned once in the Vinaya itself (Vin II 85.3) without further explanation, which, most fortunately, is provided by the *Samantapāsādikā*: "not a correct procedure (Vin II 85.3) means: not having been decided (*avinicchita*) twice at that very place (i. e. in one and the same monastery) (Sp 1192.24ff.)." Originally, it seems, *gatigata* has been restricted to one particular way of settling disputes namely "by majority" (*yebhuyyasikāya*, Vin II 84.20–85.14). At the time of the commentary, that is in the 5th century C.E., it was universally applied to all kinds of disputes as a kind of safeguard against errors and wrong decisions. This was indeed necessary, as the Vinaya does not know of any possibility of appeal in an ecclesiastical case because this was technically impossible. Once

the order had decided, there was no higher authority that could be invoked as the next higher legal level. Therefore a wrong decision by a legal expert accepted by the Saṃgha really was a disaster, as vividly described in the *Samantapāsādikā*: "for if a legal expert (*vinayadhara*) thus decides a case in excitement etc.,[65] the order in that monastery splits (*dvidhā bhijjati*), and the nuns depending upon the instruction [of the monks in that monastery] divide into two parties, and so do the laypeople and the donors. Their tutelary deities also split in the same way. Then beginning with the deities of the earth (*bhummadevatā*) up to the Akaniṭṭhabrahmas [the gods] split (Sp 1368.19–24)." In short, a wrong decision by a *vinayadhara* soon reaches "cosmic" dimensions.

Against this, a second hearing of the same case by the same persons seems to be a somewhat weak safeguard against errors and a serious restriction of the possibilities of the adversaries. In contrast to this the Dharmaśāstra s usually know of three legal levels,[66] though details vary of course as the Dharmaśāstra texts were composed at different places and at different times. Interestingly, the legal tradition of Theravāda, which has hardly ever been used for tracing the history of law in India so far, describes a much more complicated system of legal levels in secular law in the commentary on the *Mahāparinibbānasutta* of the *Dīghanikāya*:[67] "The old laws of the Vajjis (DN II 74.10) means: Formerly the kings of the Vajjis did not say: 'seize that thief!' if somebody was brought and shown to them: 'This is a thief!' but they handed [the case] over to the arbitrators (*vinicchayamahāmatta*). If these decided that he was not a thief, he could go free; if he was a thief, they would not say anything themselves, but hand him over to the judges (*vohārika*) (Sv 519.10–14)." Then follow the *suttadhāra* (Sv 519.15), who according to the subcommentary is a *nītisuttadhāra* "the one, who is an expert in the guidelines for making a decision." The next is the *aṭṭakulika* or *aṭṭhakulika* (Sv 519.16), which seems to be an expression similar to the *kula* or *pañcakula* of the Dharmaśāstras.[68] Unfortunately the meaning of this Pāli word remains obscure. The subcommentary explains: "eight important persons born into eight traditional families and abstaining from wrong procedures" (Sv-pṭ II 161.12–14), which sounds rather fantastic. For the first part of the compound seems to be *aṭṭa* "case" rather than *aṭṭha* "eight."

The next higher legal level is the "general" (*senāpati*, Sv 519.17) and the viceroy (*uparāja*, Sv 519.17), before the accused is presented to the king himself. Here the text continues: "if the king decides that he is not a thief, he is released, if, however, he is a thief, the 'book of the tradition' (*paveṇipotthaka*) is consulted. There it is written 'who does this has to be fined in that way.' The king compares his deed to that and fines him accordingly[69] (Sv 519.18.21)."

Thus the king as the last and highest legal level is at the same time the seventh in the line, if the passage is to be understood that way. The commentary on the *Aṅguttaranikāya* also refers to the "old law of the Vajjis" and says: "the kings acted according to the old traditions, investigated (*parikkhitvā*) themselves, surrounded by the *aṭṭakulika*, the general (*senāpati*) and the viceroy, consulted the 'book of tradition' (*paveṇipotthaka*), and punished accordingly

(Mp IV 11.23–12.1)." Following this text it seems that three of the "legal levels" were councilors of the king. This is nearer to the evidence of the Dharmaśāstras and perhaps also nearer to reality. For it is not impossible that the commentary on the *Dīghanikāya* intends to demonstrate how during an earlier and, of course, better period law had been administered much more carefully than this was done during the days of the commentator.[70]

A third text again gives a slightly different description of a hearing. For the commentary to the *Majjhimanikāya* says: "just as in a country, where a case (*aṭṭa*) begins, it reaches the village headman (*gāmabhojaka*),[71] if he cannot decide ([*vi*]*nicchetuṃ*, so read), the district officer (*janapadabhojaka*), if he is unable, the 'great official for arbritation' (*mahāvinicchaya-amacca*), if he is unable, the general (*senāpati*), if he is unable, the viceroy (*uparāja*), if he is cannot decide, it reaches the king. After the king has passed his verdict (*vinicchitakālato*) the case (*aṭṭa*) does not go to any other [instance]. For by the word of the king [the case] is solved (*chijjati*)[72] (Ps II 252.8–14)."

In contrast to the commentaries the historical texts such as the *Mahāvaṃsa* contain much less information about secular law.[73] For instance it is said of king Udaya I alias Dappula (812–828): "judgments that were just he had entered in books and (these) were kept in the royal palace because of the danger of violation of justice" (Mhv XLIX 20, trsl. W. Geiger). These are the "books of tradition" (*paveṇipotthaka*) known to the commentaries a few centuries earlier. This is an interesting confirmation of the information on jurisdiction described in the commentaries, which shows that this evidence at least to a certain extent mirrors the actual way law was administered. At the same time this points to the fact that there seem to have been collections of precedents.[74]

The evident interest of the commentaries in secular law is easy to understand. Although members of the order were not entitled to accuse laymen, they were nevertheless forced from time to time to seek the protection of a court, and they were able to do so. For without even naming any culprit, which was forbidden in the Vinaya, they could induce a court to issue a statement such as: "we shall punish anybody committing such and such a crime in such and such a way." The crime in question could be stealing property of the order, which was now protected without going to court if a theft occured. This crime would be persecuted at the initiative of the court now, and the culprit was punished without further involvement of the order (Sp 909.27ff.).[75]

Offences committed within the order were no less dangerous than threats from the outside, such as theft or the willful destruction of property belonging to the order. For within the order the monks had no power at all to enforce their decision on dissenting monks. This is particularly true when it was necessary to remove a monk from the order. In this respect only the king and his police can help, who did so since the times of Aśoka, as is well known from his inscriptions.[76] In much later times efforts of Sinhalese kings to restore the order within the saṃgha are rather well documented by the katikāvatas surviving from mediaeval times.[77]

Earlier interferences of Sinhalese kings are related in *Dīpavaṃsa* and *Mahāvaṃsa*. One crucial point occurred in the reign of king Mahāsena (334–361/274–301, Dīp XX 66–74, Mhv XXXVII 4ff.), when the monks of the Abhayagirivihāra succeded in persuading the king that their Vinaya was superior, and that the monks of the Mahāvihāra were following wrong practices. This resulted in a major crisis of the Mahāvihāra, during which the monks even had to abandon their monastery temporarily after losing royal support.

The commentary on the *Mahāvaṃsa* gives some of details on this dispute: "the Abhayagiri monks had deviated from the clearly formulated word of the Buddha in the Vinaya-piṭaka, in *Khandhaka* and Parivāra, by changing the wording and the interpretation (*atthantara-pāṭhantarakaraṇavasena*) and split from the Theravāda." Then follow a few of the controversial points, some of them of considerable consequence as they refer to the ordination procedure (*upasampadā*) (Mhv-ṭ II 676.20–677.5). Unfortunately all this is stated in a very general way in this commentary. Therefore it is not possible to get a very clear idea how far the Abhayagiri and the Mahāvihāra Vinaya really differed in wording or interpretation. Luckily, however, there is one passage in the *Samantapāsādikā*, where the differences in wording in both Vinayas are discussed, and where the relevant sentence is quoted in both versions.[78] This is the commentary on Saṃghādisesa VIII, which deals with unjustifiëd accusations of a Pārājika offense (Vin III 163.21**–26**). The introductory story relates, how the monk Dabba Mallaputta is accused by the nun Mettiyā of raping her, which is an offense against Pārājika I. The accusation turns out to be unfounded, and the Buddha rules that the nun Mettiyā should be expelled (*nāseti*).[79]

Now in the commentary the problem is discussed at some length, whether the nun was expelled with the consent (*paṭiññāya*) of Dabba Mallaputta or not. If Dabba had consented, he was instrumental in the punishment (*kāraka*), which would have been a fault of his (*sadoso*). Again at the time of king Bhātiya there was a dispute between the Abhayagiri and the Mahāvihāra monks referring to this very point. As both fraternities were unable to settle their dispute, they brought it before the king, because no other higher instance was available to them: "The king heard [that they were unable to settle their dispute], brought the Elders together and appointed an official (*amacca*) named Dīghakārāyana, who was a brahmin, to hear the case. This official was indeed wise and an expert in foreign languages. He said: 'The Elders should recite their text.' Then the Abhayagiri monks recited their text: '*tena hi bhikkhave Mettiyaṃ bhikkhuniṃ sakkāya paṭiññāya nāsetha*.' The official said: 'In your opinion (*vāde*), reverend sirs, the Elder is the agent and has committed a fault (*sadoso*).' Then the Mahāvihāra monks recited their text: '*tena hi bhikkhave Mettiyaṃ bhikkhuniṃ nāsetha* (Vin III 162.38).' The official said: 'In your opinion, reverend sirs, the Elder is not the agent and without fault. Here, what has been said last, is correct. For the experts, whose views are found in the commentaries (*aṭṭhakathā*) had deliberated that . . . (Sp 583.5–15)."

This is a rare, if not unique instance, because the texts of both Vinayas, the

one of the Abhayagiri and the Mahāvihāra, are quoted. Both texts are exactly parallel and differ only by the insertion of two words in the Abhayagiri-Vinaya. If any conclusion can be drawn from this evidence of a single sentence, both Vinayas may have been largely identical, as one would expect anyway. Neverthess the difference, however slight, is legally quite significant.[80]

This dispute had to be settled by a secular judge, because there is no higher authority the monks of two different monasteries could turn to. In spite of the secular nature of the court, the ultimate victory of the Mahāvihāra—of course, because the *Samantapāsādikā* after all is a Mahāvihāra text—is due to the opinion expressed in earlier commentaries. Therefore it has to be supposed that the said brahmin, although he should have been an expert in the Sanskrit Dharmaśāstras rather, was also versed in Buddhist law. This could be the reason for the remark that he knew foreign languages.[81] For, if he was able to decide a case according to Buddhist law, he should have at least some training in Pāli, if not in Sinhalese Prakrit as well, because the commentaries were not yet translated into Pāli during the reign of king Bhātiya according to the Buddhist tradition.

Problems of this kind arose time and again within the saṃgha in Ceylon. The reforms of king Parakkamabāhu I. (1153–1168) trying to put an end to these confrontations by uniting the saṃgha are well known. Still conflicts involving ecclesiastical and secular law did not cease to exist in Ceylon or in other parts of the Theravāda world. Thus far the relevant material found in printed texts, specificially the commentaries to the Vinaya, has never been collected systematically. This is true also for Vinaya texts existing only in manuscript form so far, or for inscription and documents.

Leaving aside the efforts by kings or by modern secular governments[82] to guarantee the purity of the saṃgha by removing monks not complying with Vinaya rules, or by having them reordained, a few concluding remarks may be made on a very famous dispute, which kept the kings of Burma busy for about a century. This is the so called *ekaṃsika-pārupaṇa*-controversy, which extends over the better part of the 18th century in Burma. It is described at some length in Paññāsāmin's Sāsanavaṃsa, which was adapted into Pāli in C.E. 1861 from a slightly earlier Burmese version of C.E. 1831[83] (Sās 118–142 / Sās-trsl. 123–144), and resumed by M. Bode and again at great length by N. Ray[84]: In C.E. 1698 a monk named Guṇābhilaṅkāra ordered his disciples to cover only the left shoulder when entering a village. This was thought to be an offense against the "correct behavior while collecting alms" (*piṇḍacārika-vatta*, Vin II 215.6–217.35), where it is said that a monk should enter a village well covered (Vin II 215.33ff.).[85] The party of Guṇābhilaṅkāra became known as the "group that covers one shoulder" (*ekaṃsikagaṇa*), and the traditionalists as the "well dressed (or: well covered) group" (*pārupanagaṇa*) (Sās 118ff./Sās-trsl. 124). After a bitter feud, which at times was intensified by a conflict between forest dwellers (*araññavāsin*) and village dwellers (*gāmavāsin*), during which the village dwellers even took up arms (*saṃnahitvā*, Sās 119/Sās-trsl. 125) to drive the forest dwellers away from the villages back into the forest,[86] the matter was

finally settled in C.E. 1784 by king Bodawpaya (1782–1819) in favor of the traditionalists (*pārupanagaṇa*). His predecessors had vacillated between both parties and consequently conflicting decrees had been issued in course of the 18th century. These royal orders, which are preserved at least in part, underline the importance of the Vinaya dispute, which seems to have been a rather important topic of politics at times.[87]

Though the dispute is interesting in itself, it may be sufficient here to concentrate on its end, because some royal orders extant supplement the evidence found in the *Sāsanavaṃsa*.[88] Early in C.E. 1784 King Bodawpaya summoned both parties to present their views, after the leader of the "one shoulder group,' at that time Atulayasaddhammarājaguru, who had been the preceptor of King Mahadhammayaza (1733–1752), had written to the king from his exile and stated his views he thought were supported by the *Cūḷaganṭhipada*: " 'a fold of the robe (*cīvara*) has to be bound as a chest cover above the outer robe (*saṃghāṭī*).' Novices should put their upper robe (*uttarāsaṅga*) on one shoulder when entering a village and bind a chest-cover" (Sās 135/Sās-trsl. 138). Thus the "one shoulder group" finally found some textual evidence supporting their view, what they had needed badly during an earlier hearing under King Singu (1776–1781) (Sās 129ff./Sās-trsl. 133) without finding it.[89] Here suddenly a new Vinaya text is mentioned, and Paññāsāmin a bit viciously implies that it had been forged under king Sane (1698–1714) by a layman bribed by monks of the "one shoulder group" (Sās 119/Sās-trsl. 124).

Of course Atula's claim is challenged at once and upon examination it turns out that he had—intentionally (?)—mixed up the old *Vinayaganṭhipada* with the *Cūḷaganṭhipada* (Sās 136/Sās-trsl. 139). Consequently the king ruled that the *pārupanagaṇa*, led at that time by Ñāṇavilāsasaddhammarājādhirājaguru,[90] who had been made head of the saṃgha on June 3, 1782,[91] was correct, and thus the *ekaṃsikagaṇa* was suppressed once for all. This was made public by the proclamation of a series of royal orders.[92] It can be inferred from the evidence contained in these orders that Atula had been in exile since the reign of king Hsinbushin (1773–1786), when he was summoned to court on April 21, 1784. The next document of April 25, 1784, confirms that he had based his views on the *Cūḷagaṇḍi* (sic) already during the reign of Alaung-paya (1752–1760), and the document continues that Atula and his followers were supposed to be sent into exile again in 1784, but before that he was sentenced to collect fodder for elephants in the woods together with his followers.[93] In a last document dated April 24, 1784, the king revokes all these punishments at the request of high ranking monks.

It is not entirely clear which Vinaya texts exactly Atula used to support his opinion. Of course an old *Cūḷaganṭhipada* is referred to together with a *Majjhima-* and a *Mahāganṭhipada* by Sāriputta in the introduction to his *Sāratthadīpanī*, a 12th century commentary to Buddhaghosa's *Samantapāsādikā*.[94] However, all these Gaṇṭhipadas were written in Sinhalese, and Sāriputta mentions only one in Pāli, the *Vinayaganṭhipada*.

According to the *Sāsanavaṃsa* Atula was asked about his *Cūḷaganṭhi* by his adversaries: "Is your *Cūḷaganṭhipada* quoted as a support [for certain views] in the great Vinaya subcommentaries (i.e. *Vajirabuddhiṭīkā, Sāratthadīpanī, Vimativinodanī*)?"—"It is quoted in the three great Vinaya subcommentaries as a support."—"If this is so, how then can it be said in the *Cūḷaganṭhipada*: 'This has been said in the *Sāratthadīpanī*; this had been said in the *Vimativinodanī*?' For [the *Cūḷaganṭhi*] being later than the three great subcommentaries, the three great subcommentaries are quoted as a support [in the *Cūḷaganṭhi*] (Sās 138 / misunderstood Sās-trsl. 141)." Consequently Atula is defeated on the grounds of chronology: An earlier text cannot possibly quote from a book composed at a later date.

Thus the *Cūḷaganṭhi*, of which Atula produced a copy during the hearing of his case, belongs to the late Vinaya literature, and cannot be identical with the much earlier Sinhalese *Cūḷaganṭhipada*. Which text is it then? So far this was not known, until F. Bizot, EFEO Chiang Mai, drew my attention to the manuscript Or 9238 of the British Library, which comprises 17 fascicles (*phūk*) copied in Khmer script in C.E. 1793 and bearing the title *Guyhatthadīpanī Cūḷaganṭhisaṅkhepa* "the abbreviated version of the small text on knotty points [in the Vinaya] called lamp [elucidating] the hidden meaning." This manuscript, which quotes from the *Majjhima-* and *Cūḷaganṭhipada*, is incomplete. Fascicles 1, 2, and 12 are lost and even fascicle 17 does not contain the end of the text. Luckily the continuation is found in the *Cūḷaganṭhipadamahāvagga* copied in C.E. 1836 and preserved at Vat Sung Men in Phrae (North Thailand).[95] This manuscript comprises another sixteen fascicles without reaching the end of the text. In addition to this large Vinaya text there is further a *Mahāganṭhipadamahāvagga* in the same monastery in fifteen fascicles and also copied in C.E. 1836,[96] which obviously contains only a fraction of the complete text, perhaps less than 10%, for it ends with the Uruvelā-Kassapa episode right at the beginning of the *Mahāvagga*. The enormous length of these text seems to be due to extensive quotations borrowed from well known earlier Vinaya literature. However, now and then new opinions seem to have been inserted, which show that these texts in fact provide new and potentially very interesting material for the late history of Buddhist law. As the *Sāsanavaṃsa* quotes one sentence verbatim from the *Cūḷaganṭhi*, it is not impossible to verify if the *Cūḷaganṭhipada* of the British Library and Vat Sung Men are identical to Atula's text.

Indeed the relevance of *Mahā-* and *Cūḷaganṭhipada* seems to be considerable for Buddhist law in Burma in the recent past. For, as Shway Yoe (alias Sir James George Scott: 1851–1935) writes, there were rival parties following the "Mahagandi" and "Sulagandi" respectively during the second half of the last century. This dispute centered on a controversy over simple or luxurious life styles of monks: "faction feeling runs so high that street fights between scholars of these two sects are very common, and often so embittered that the English authorities have to interfere to restore peace in the town, for the laity takes sides with equally bitter animosity."[97]

Thus there will never be an end to Vinaya controversies as long as the sāsana continues to exist. Research in these matter is still quite in its infancy and has hardly really started. Rich material is buried in printed editions and probably also in manuscripts. Inscriptions from Theravāda countries and royal orders from Burna have not been used so far. The latter contain many interesting details on the possible interrelation of ecclesiastical and secular law evident already in older literature. For although judges are advised to use a dhammathat and are even provided with copies,[98] a Buddhist legal expert (*vinayadhara*) decides about the real estate of two monasteries on May 14, 1720,[99] by referring to documents(?), in this particular case most probably to landgrants dated C.E. 1654 and C.E. 1444 (!) respectively. The royal order confirms his decision.

Thus the working principles of legal procedures seem to have been fairly stable over a long time. And if a royal order of June 17, 1784, proclaims that the rainy season (vassa) in that year had begun on July 1,[100] this brings us back right to the *Mahāvagga* of the Vinaya-piṭaka.

All this rich, hardly explored history of law quite different and independent from Hindu Dharmaśāstras is at the same time a considerable intellectual achievement of Indian culture. Only in the very recent past the first steps to understand or even to discover the elaborate system that seems to underly Buddhist legal texts have been taken.[101] This aspect has not been touched in the present discussion, which tried to concentrate only on the Theravāda legal tradition leaving aside the Vinaya of other schools, which at least as far as the Mūlasarvāstivādins are concerned, have an equally rich heritage of texts mainly preserved in Tibetan.[102] Once all this will have been thoroughly researched, Buddhist, and perhaps particularly Theravāda law[103] might stand as a major Indian contribution to culture in general.[104] Today usually Indian indigenous grammar is cited and Pāṇini quoted, or Brahmagupta is named in the field of mathematics.[105] Law, legal literature, and judicial thinking of the Buddhists are passed over in quite unjustified silence in this context, even in a purely Indian context; for in the slim, but highly stimulating volumes contributed by J. D. M. Derrett to the History of Indian Literature or to the Handbuch der Orientalistik[106] Buddhist law is omitted, and the Vinaya as a law book is well hidden in the volume of the History of Indian Literature on Pāli literature. This will certainly change once the system of Buddhist law is understood, and it can be achieved only by a comprehensive investigation first of all into the legal terminology,[107] which is the key to understand the development and history of Buddhist law.

Abbreviations

AAWG	*Abhandlungen der Akademie der Wissenschaften in Göttingen.* Philologisch-historische Klasse. Dritte Folge
Abhis-Dh	*Abhisamācārikā Dharmāḥ* ed. B. Jinanada. Patna 1969
AN	*Aṅguttara-nikāya*
AO	*Acta Orientalia*

AWL	Akademie der Wissenschaften und der Literatur, Mainz. *Abhandlungen der geistes- und sozialwissenschaftlichen Klasse*
BEFEO	*Bulletin de l'École Française d'Extrême-Orient*
CPD	V. Trenckner, *A Critical Pāli Dictionary*, Vol. I (1924–1948), Vol. II (1960–1990), Vol. III, 1 (1992), Vol. III, 2 (1993). Copenhagen
DN	*Dīgha-nikāya*
IHQ	*Indian Historical Quarterly*
IT	*Indologica Taurinensia*
Ja	*Jātaka(-aṭṭhavaṇṇanā)*
JAOS	*Journal of the American Oriental Society*
JPTS	*Journal of the Pāli Text Society*
Kkh	*Kaṅkhāvitaraṇī*
KZ	*(Kuhns) Zeitschrift für vergleichende Sprachforschung*
Mp	*Manorathapūraṇī*
OLZ	*Orientalistische Literaturzeitung*
PD	*An Encyclopaedic Dictionary of Sanṣkrit on Historical Principles.* Poona 1976ff.
PED	T. W. Rhys Davids and W. Stede, *The Pāli Text Society's Pāli-English Dictionary* (London)
1921–	1925
Sadd	*Saddanīti*
Sās	*Sāsanavaṃsa*
Sp(-ṭ)	*Samantapāsādikā(-ṭīkā: Sāriputta: Sāratthadīpanī)*
Spk	*Saratthapakāsinī*
StII	*Studien zur Indologie und Iranistik*
Sv	*Sumaṅgalavilāsinī*
Vin	*Vinaya-piṭaka*
ZDMG	*Zeitschrift der Deutschen Morgenländischen Gesellschaft*

Pāli texts are quoted according to the editions mentioned in the Epilegomena to the CPD, if not stated otherwise.

Notes

1 There are of course exceptions: S. Lienhard, "Buddhistisches Gemeindeleben in Nepal," *Zur Schulzugehörigkeit von Werken der Hinayāna-Literatur*, Part 1, AAWG 149 (Göttingen: 1985) 261–274.

2 Cf. CPD s.v. *antaradhāna*, and add to the references given there: Sv 898.18–899.26=Ps IV 115.10–116.26; Mp I 88.11–89.16; cf. Sp 13.6=Sv 11.17.

3 The first offender ever is the monk Upasena, Vin I 59.1–34, cf. Sp 194.1 and Sp 213.11–19 on *apaññatte sikkhāpade*, and MN I 444.36–445.25.

4 The arrangment of the Tipiṭaka is found at the beginning of the commentaries to the three parts of the Tipiṭaka respectively: Sp 18.1–19; Sv 16.31–17.16; As 6.13–9.14.

5 O. v. Hinüber, *Der Beginn der Schrift und frühe Schriftlichkeit in Indien*, AWL 11

(1989) 41–54; cf. also the formula *dhamma vinaya*, never **vinaya dhamma*: This sequence, however, may also be due to rhythmical considerations: O. v. Hinüber, *Untersuchungen zur Mündlichkeit früher mittelindischer Texte der Buddhisten*, AWL 5 (1994) 16.

6 O. v. Hinüber, "Die neun Aṅgas. Ein früher Versuch zur Einteilung buddhistischer Texte," WZKS 38 (Orbis Indicus. Festschrift G. Oberhammer) (1994): 121–135.

7 O. v. Hinüber, "Vinaya and Abhidhamma" StII (Festschrift für G. Buddruss) (in press).

8 The relevant material for easy comparison has been collected in W. Pachow, *A Comparative Study of the Prātimokṣa on the Basis of Its Chinese, Tibetan, Sanskrit and Pāli Versions* (Santiniketan: 1955) (review: Kun Chang, JAOS 80 [1960]: 71–77).

9 O. v. Hinüber, *Die Sprachgeschichte des Pāli im Spiegel der südostasiati-schen Handschriftenüberlieferung*, AWL 8 (1988) 3, note 2. The correct interpretation of *pārājika* may be preserved at Vin V 148.15* quoted Sp 260.3–5; but: *parājito parājayaṃ āpanno*, Sp 259.17.

10 On the interpretation of this rule see D. Schlingloff, "König Aśoka and das Wesen des ältesten Buddhismus," *Saeculum* 36 (1985): 326–333. Even if a monk had attained *uttarimanussadhamma*, he was not allowed to communicate this fact to people outside the order: Pācittiya VIII, Vin IV 25.13.

11 E. Nolot, "Sāṃghāvaśeṣa-, Saṃghātiśeṣa- Saṃghādisesa-," *Bulletin d'Études Indiennes* 5 (1987): 251–272, referring also to previous literature.

12 This seems to be meant by *śeṣe*, cf.: *nirṇaye vayaṃ pramāṇaṃ, śeṣe rājā, Mṛcchakaṭika*, act IX (before verse 39) "in evaluating the evidence we (the judge) are the authority, for the rest (i.e. the sentence) [it is] the king," cf. *śeṣe* (so read) *pramāṇaṃ tu bhavantaṃ, Mahābhārata* III 53.21 (Nalopākhyāna). In Mṛcch this is said by the judge at the end of the trial of Cārudatta, which shows that investigation and judgement are clearly separated.

13 Cullavagga chapters I–III, Vin II 1.5–72.29.

14 T. Ohtomo, "Interpretations of Sikkhāpada, in the case of Saṃghādisesa X," *Indogaku Bukkyōgaku Kenkyū* (Journal of Indian and Buddhist Studies), 19.2 (1971): 831–834 (in Japanese); H. Bechert: The Importance of Aśoka's so-called Schism Edict," *Indological and Buddhist Studies. Volume in Honour of J. W. de Jong on his 60th Birthday* (Canberra, 1982): 61–68, and "On the Origination and Characteristics of Buddhist Nikāyas, or Schools," *Premier Colloque Étienne Lamotte* (*Bruxelles et Liège 24–27 septembre 1989*) (Louvain-La-Neuve, 1993): 51–56; K. R. Norman, "Aśoka and Saṅghabheda," *Studies in Original Buddhism and Mahāyāna Buddhism in Commemoration of F. Watanabe* (Kyoto: 1993) 9–29; S. Sasaki, "Buddhist Sects in the Aśoka Period (I)—The Meaning of the Schism Edict," *Bukkyō Kenkyū* (Buddhist Studies) 18 (1988): 181–202; (II)—Saṃgha-bheda (1), *Ibid.* 21 (1992): 157–176.

15 O. v. Hinüber, "Über drei Begriffe der buddhistischen Rechtssprache: issaravatā, gīvā und bhaṇḍadeyya," IT 7 (1979): 275–279. Property of monks is listed in Sp 290–294; 1244ff; cf. also G. Schopen, *JIABS* 14.2 (1991): 312ff.

16 The structure of the Pātimokkha will be discussed in detail in an article under preparation.

17 On the explication of the name *pācittiya* see O. v. Hinüber, "Die Bestimmung der Schulzugehörigkeit buddhistischer Texte nach sprachlichen Kriterien," *Schulzugehörigkeit* ... (as above note 1) 64ff., cf. H. Matsumura, AO 51 (1990): 67, note 17; very rarely also the form *pācattiya* occurs: O. v. Hinüber, *The Oldest Pāli Manuscript. Four Folios of the Vinaya-Piṭaka from the National Archives, Kathmandu*, AWL 6 (1991) 22; on Jaina evidence: C. Caillat, *Les expiations dans le rituel ancien des religieux jaina*, Publications de l'Institut de Civilisation Indienne, Séries In-8°, Fascicule 25 (Paris: 1965) 16.

18 On the classification of transgressions: É. Nolot, *Règles de discipline des nonnes bouddhistes*, Publications de l'Institut de Civilisation Indienne, Fascicule 60 (Paris: 1991) 384–386.

19 This wording is shared with Jaina legal literature, where rules begin with *je bhikkhu* . . .

20 D. Schlingloff, "Zur Interpretation des Prātimokṣasūtra," ZDMG 113 (1963): 536–551, particularly p. 542ff.

21 Although it is not clear, what exactly is meant by these rules, it seems that Pācittaya LXXII, Vin IV 143.17* uses this expression in reference to the *Pātimokkhasutta*. The Pācittiyas are called *khuddaka*, Sp 735–7*; 886.2*; 213.18. Cf. also J. Dhirasekera, "The Rebels Against the Codified Law in Buddhist Monastic Discipline," *Bukkyō Kenkyū* (Buddhist Studies) 1 (1970): 90–77.

22 The reason given is quite interesting: changes might confuse the lays: Vin II 288.17.

23 In contrast to all other groups the number of the Sekkhiyas is not given in the introduction to their recitation: Vin IV 185.1; 206.31; 207.15. This points to the fact that their number was not as strictly fixed as that of all the other offenses.

24 The existence of the Pātimokkhasutta also as a separate text is guaranteed by Kkh. It is referred to as a separate text at Spk II 203.12; Vibh-a 32.30.

25 This passage is quoted in Sp 14.5–7.

26 This has been discussed in detail by D. Schlingloff in the article mentioned in note 20 above.

27 It was not always clear which of the two catagories applies, as in the case of Sekkhiya I: Sp 890.10–12.

28 The meaning given s. v. *antarāpatti* in the CPD is wrong, and corrected s. v. *āpatti*, ifc. It has to be kept in mind that this word has two meanings: 2. "offense committed, while being suspended because of an offense committed earlier," for which see Cullavagga I, II and note 36 below.

29 Cf. J. D. M. Derrett, "Adattādānam: Valuable Buddhist Casuistry," IT 7 (1979): 181–194.

30 H. Hecker, "Allgemeine Rechtsgrundsätze in der buddhistischen Ordensverfassung," *Verfassung und Recht in Übersee* 10 (1977) 89–115, particularly p. 97; cf. the discussion of *ādikammika*, Sp 610.6–611.4.

31 Cf. e.g.: T. Bartholomeusz, "The Female Mendicant in Buddhist Srī Laṅkā," *Buddhism, Sexuality, and Gender*, ed. J. I. Cabezón (Delhi: 1992) 37–61, and P. Skilling, "A Note on the Bhikkhunī-saṅgha (II): The Order of Nuns after the Parinirvāṇa," *Pālī-Sanskṛta-Vijākār. Mahāmakuṭarāja Vidyālay* 2436 (Bangkok: 1993) 208–251.

32 Other precepts are "not common" (*asādhāraṇa*) and consequently apply either to monks or to nuns. Therefore these offenses, though committed by a monk or a nun, disappear in case of a change of sex: *Mahāyānasūtrālaṃkāra*, ed. S. Lévi (Paris: 1907) 55.5; cf. O. v. Hinüber: *Vinaya und Abhidhamma*, as above note 7, at the end.

33 The relevant text is found in *The Paṭimokkha*, Trans. Ñāṇamoli (Bangkok: 1966) 9; the procedure is described at Kkh 12.6–14.2 and Sp 794.20–798.17.

34 A single monk can hold up to 13 functions (Sp 578.28, cf. Sp 1163.16), if he is able (*vyatta*, Sp 578.26 on Vin III 158.23) to do so. These functions are enumerated at Vin V 204.29–33, cf. Sp 1411.25–28 quoted Sp-ṭ II 344.15–18 ad Sp 578.28; also Sp 1195.22ff.=1396.6; further on *bhaṇḍāgārika*, Sp 354.21 and on *vihāracārika*, Sp 357.9ff.

35 O. v. Hinüber, "Das buddhistische Recht und die Phonetik des Pāli. Ein Abschnitt aus der Samantapāsādikā über die Vermeidung von Aussprachefehlern in *kammavācās*," StII 13/14 (Festschrift W. Rau) (1987): 101–127. -For more recent times cf.: F. Bizot, *Les traditions de la pabbajjā en Asie du Sud-Est*, AAWG 169 (1988).

36 Such an offense is called *antarāpatti*, see note 28 above.
37 A corresponding list is found at AN I 99.4–8, which is explained at Mp II 164.32–165.7.
38 These are described repeatedly in the same wording Vin II 5.5–15 etc.; a special case is mentioned Vin II 22.12–23.2: *āpattiyā adassane ukkhepanīyakamma*.
39 The definition given for *pabbājaniyakamma* in the PED is not correct.
40 A similar case is the infliction of Brahmadaṇḍa, Vin II 290.19–21. It needs a minister of king Mahāsena (334–361) to defrock (*uppabbājesi*) a monk accused of a pārājika (*antimavatthu*), Mhv XXXVII 38ff.
41 This is the correct form of the word: CPD s. v.
42 This word is used only for ecclesiastical cases (cf. Sp 593.24–595.5), the corresponding expression for secular law being *aṭṭa*, derived from Sanskrit *artha* with Dravidian or Sinhala desaspiration: O. v. Hinüber, "Drei Begriffe . . .," as in note 15 above, p. 278 note 12. The meaning of Sanskrit *adhikaraṇa*, even in a legal context, is slightly different; cf. PD s. v.
43 P. V. Kane, *History of Dharmaśāstra* Vol. 3 (Poona: 1973) 279, refers to act IX of that drama. Information on law suits from a much later time is given by J. Duncan M. Derrett, G. D. Sontheimer, and G. Smith, *Beiträge zu indischem Rechtsdenken* (Wiesbaden: 1979) 61ff. (on Maharashtra), and by R. Larivière, "A Sanskrit Jayapattra from 18th Century Mithilā," *Studies in Dharmaśāstra*, ed. R. Larivière (Delhi: 1984) 49–80 (on Bihar).
44 The qualities of a *vinayadhara* are described at length at Sp 871.29–875.29.
45 Monks, who were disenchanted with a decision of king Kaṇirajānutissa (89–92) even tried to murder him, for which they were thrown into a precipice (*pabbhāra*): Mhv XXXV 11 cf. note 62 below.
46 This is one of the *adhikaraṇasamathas*: "by committee."
47 On "motion" and "proclamation" cf. O. v. Hinüber, Das buddhistische Recht mentioned above in note 35.
48 This verdict is not mentioned in the enumeration of *ñattidutiya kamma*, Sp 1396.1–6.
49 This is usual in Hindu law; cf. R. Larivière mentioned in note 43 above.
50 They are defined as: 1. *atikkantasaññī*, 2. *vematiko*, 3. *anatikkantasaññī*, Sv-nṭ I 135. 22–24: The example quoted is Nissaggiya I, Vin III 197.15–18.
51 See note 28 above.
52 Cf. the *vinayamahāpadesa*, Sp 230.33–233.2, where Vin I 250.36–251.6 (Sp 1103.25–1104.30) is quoted.
53 The exact form of the name of the Elder is not clear. The tradition has Godatta, Godha(ka), Goda, Gotta, and Godanta.
54 E. W. Adikaram, *Early History of Buddhism in Ceylon* (Colombo: 1953) 86ff. The date may have to be postponed by sixty years; cf. H. Bechert in the introduction to the reprint of W. Geiger, *Culture of Ceylon in Mediaeval Times* (Stuttgart: 1986) XX. However doubts about these new dates are raised in the review by R. Gombrich, OLZ (1990): 83ff.
55 Cf. note 86 below.
56 Cf. O. v. Hinüber, "Vinaya und Abhidhamma," quoted above in note 7.
57 Cf. the remarkable observation of Sāriputta in his *Sāratthadīpanī*: "The Elders who teach the Mahā-aṭṭhakathā are ridiculed as 'Suttantikattheras,' because they are ignorant of the Vinaya (Sp-ṭ II 267.23)."
58 On the problem of a monk's property in modern Siam see R. Lingat, "Vinaya et droit laïque. Études sur les conflits de la loi religieuse et de la loi laïque dans l'Indochine hīnayāniste," BEFEO 37 (1937): 415–477.
59 See note 99 below.

60 On Bimbisāra and the Vinaya see A. Bareau, "Le Bouddha et les rois," BEFEO 80 (1993): 15–39, particularly p. 29ff.

61 On the meaning of this word see O. v. Hinüber, "Bemerkungen zum Critical Pāli Dictionary II," KZ 94 (1980): 25.

62 Cf. note 42 above. The term *aṭṭa* is also used, when king Kaṇirajānutissa (89–92) decides a case concerning an *uposatha*-house: *uposathāgāra-aṭṭa*, Mhv XXXV 10 (Mhv-ṭ 640,21ff.); cf. note 45 above. Moreover *aṭṭa* survives as a legal term in South East Asian Dharmaśāstras.

63 Cf. *codaka-cuditaka-anuvijjhaka*, Sp 879.28ff., cf. Vin II 248.16–249.28 quoted Vin V 190.8–16 and AN V 79.9–81.15. There is a long *codanādivinic-chayakathā* in the *Pāḷimuttakavinayavinicchayasaṅgaha-Vinayālaṅkāraṭṭhakathā Be* (1960) chap. 31, 309–330. At a very early period the ecclesiastical terminology seems to have been slightly different: *codaka* "plaintiff" contrasts with *adhikaraṇe āpanna* (AN I 53.34ff., Mp II 101.13) instead of *cuditaka*. In Sanskrit *codaka* etc. have a different meaning.

64 An *āyuttaka* "official (to administer law)" is sent to a village at the request of villagers: Spk III 61.1–25; cf. CPD s. v. *āyuttaka*; on travelling *vinayadharas* see Sp 1354.28–31.

65 This is one of the wrong ways of behavior for a *vinayadhara*: CPD s. v. *agati*, 2.

66 J. Jolly, *Recht und Sitte* (Strassburg: 1896) 134, and Kane, *History*, as in note 43, vol. III, 280–284.

67 Already G. Turnour (1799–1843) referred to this text as early as in 1838 according to R. Fick: *Die sociale Gliederung im nordöstlichen Indien zu Buddha's Zeit* (Kiel: 1897) 70, note 1 (rev.: S. Konow, *Göttngische Gelehrte Anzeigen* [1898] 325–336). Fick has very carefully collected all the relevant material concerning jurisdiction from the Jātakas, which, of course, do not reflect the conditions at the time of the Buddha. Further it has to be kept in mind that Fick's book is based only on Ja I-V; Ja VI was not yet published at the time of his writing.

68 According to Kane, *History*, as above note 43, vol. III, 282ff.

69 The king also can correct wrong decisions: "having sat one day (in court) deciding a wrongly decided case [*dubbinicchitaṃ aṭṭaṃ vinicchinanto*, Thūp 236. 10ff.], he stood up very late . . ."

70 It should be kept in mind that the commentaries were composed in the Mahāvihāra not long after the time of king Mahāsena (334–361), during which this monastery suffered much from the injustice of that king; see below.

71 A. N. Bose, "The Gābhojaka in the Buddhist Birth Stories." IHQ 13 (1937): 610–616, and R. Fick, as note 67 above, index s. v.

72 An older and quite different sequence of legal levels is found in the *Suttavibhaṅga* on Pārājika II dealing with theft: "king of the whole earth, king of a country (*padesarāja*), ruler of a district (*maṇḍalika*), border chief (*antarabhogika*), judge (*akkhadassa*), high official (*mahāmatta*)" (Vin III 47, 1ff. with Sp 309.3–15): All these persons can inflict punishment (*chejjabhejja*). It is interesting to note that the word for "judge" *akkhadassa* corresponds to Sanskrit *akṣadarśa*(*ka*), which according to the PD occurs in grammatical literature only, and is not attested in juridical literature: Mahābhāṣya ad Pāṇini 8.4.2, Kāśikā ad Pāṇini 8.4.49. A further instance in Buddhist literature has escaped the PD Budhasvāmin: *Bṛhatkathāślokasaṃgraha* XX 194, cf. Vāk 4.1954, p. 89; cf. also: *kumāraka, dharmiṣṭha, akṣadarśa, gaṇaka, mahāmātra*, Abhis-Dh 87.9.

73 Geiger, *Culture of Ceylon*, as note 54 above, § 139.

74 Similar collections are mentioned by R. Okudaira, "The Burmese Dhammathat," *Laws of South-East Asia. Volume I: Premodern Texts*, ed. M. B. Hooker (Singapore: 1983) 35.

75 Although all this is said in reference to nuns this paragraph in the Vinaya-piṭaka and in the Samantapāsādikā, it is also valid for monks: *yo câyaṃ bhikkhunīnaṃ vutto bhikkhūnaṃ pi es' eva nayo*, Sp 909,29ff.; cf. also Sāriputta's *Pāḷimuttakavinayavinicchayasaṅgaha-Vinayālaṃkāraṭīkā Be* (1960) 433. 12ff., where this paragraph is quoted from Sp. 908.23ff. substituting the word *bhikhu* for *bhikkhunī* in the *Samantapāsādikā*.

76 Relevant material has been dicussed in the articles mentioned in note 14 above. According to Mhv V 270 (cf. Sp 61.4) monks were expelled (*uppabbājapayi*) from the Saṅgha by Aśoka because of *micchādiṭṭhi*.

77 N. Ratnapala, *The Katikāvatas. Laws of the Buddhist Order of Ceylon from the 12th Century to the 18th Century. Critically Edited, Translated and Annotated.* Münchener Studien zur Sprachwissenschaft Beī-heft N (München 1971). Regulations for the Siamese order provided by Rāma I are preserved in the *Kotmāi Trā Sām Duang*, chapters 28 and 29: Y. Ishii, "The Thai Thammasat," *Laws of South-East Asia*, as note 74, p. 147.

78 This discussion referring to a dispute within the Sinhalese order only, has been omitted from the Chinese translation of the *Samantapāsādikā*: P. V. Bapat and A. Hirakawa, *Shan-Chien-P'i-P'o-Sha. A Chinese Version by Saṅghabhadra of Samantapāsādikā*, Bhandarkar Oriental Series 10 (Poona: 1970) 387.

79 "Revocation" (*nāsanā*) refers to novices (*sāmaṇeras*) according to Pācittiya LXX (Vin IV 139.18**–34**, cf. the definition at Sp 870.35–871.4 and Sp 1013.1; 1014.10–1015.4) and also to nuns (*bhikkhunī*). For Mettiyā commits an offense against Saṃghādisesa VIII of the monks, which is also valid for nuns (*dve duṭṭhadosā*, Sp 915.34). In contrast to the Saṃghādisesas for monks, however, those for nuns include "expulsion" (*nissāraṇā*, Vin IV 225.7), which refers to the five offenses discussed in *Cullavagga* I (Vin II 1–28) (*pabbājaniyakammādi*, Sp 1147.14). These include *ukkhepaniyakamma* (Vin II 21.5–25.7), which is identical with *saṃvāsa-nāsanā* (Sp 582.22ff.). Thus it is correct to use the term *nāsetha* here referring to Mettiyā. This shows that nuns and novices are equal before Buddhist ecclesiastical law, at least in certain respects. Both are also subject to *daṇḍakamma*: for novices, Vin I 84.14ff.; for nuns, Vin II 262.29ff., though the punishments called *āvaraṇa* are different for both novices and nuns.

80 Adikaram, as in note 54 above, p. 88, quotes this text in a rather imprecise way.

81 On an actual language problem in the hearing of a case concerning a fire, which started in a monastery, where monks from different parts of South East Asia were living: Royal order of May 22, 1642, in *The Royal Orders of Burma, A.D. 1598–1885*, ed. Than Tun Vol. I (1983) 124. Kyoto 1983–1986, Vols. I–V: Order of May 22, 1642: I (1983), p. 124, cf. I(1983), p. 119: April 29, 1641. All references to this collection given here refer to the English summary. This case is also of interest as it shows that monks were subject to secular law; cf. R. Okudaira as in note 74 above, p. 28.

82 Cf. e. g. H. Bechert, "Neue buddhistische Orthodoxie: Bemerkungen zur Gliederung und zur Reform des Sangha in Birma," *Numen* 35 (1988): 24–56, where the text of the law for ecclesiastical jurisdiction of 1980 can be found on p. 51–56. The laws for the order in Thailand are found in *Acts on the Administration of the Buddhist Order of Saṅgha* [sic] *B.E. 2445 (1902), B.E. 2484 (1941), B.E. 2505 (1962)* (Bangkok: 1989). In accordance with articles 18 and 25 the "council of Elders" (*mahātherasamāgama*) has filled the frame described by the law of 1962 with regulations for the order: *Kaṭh mahātherasamāgam chapáp dī*[1] 11 (B. Ś. 2521: A.D. 1978) (Bangkok 2522: 1979).

83 V. B. Liebermann, "A New Look at the Sāsanavaṃsa," BSOAS 39 (1976): 137–149.

84 M. Bode, *The Pāli Literature of Burma* (London: 1909) 65–76; N. Ray, *An Introduction to the Study of Theravāda Buddhism in Burma* (Calcutta: 1946) 217–236.

85 The correct way of wearing the robe is also included in rules for a monastery in 10th century Ceylon: "Tablets of Mahinda IV at Mihintale," *Epigraphia Zeylanica* 1 (1904–1912) 99, lines 9–15. The inscription refers to the Sikakaraṇī, the text of which is given loc. cit. in note 5.

86 See note 55 above.

87 *Royal Orders of Burma*, as mentioned above in note 81.

88 This is particularly important for the Pāli Sāsanavaṃsa, which, according to Liebermann p. 148 omits a "key sentence" from its source of 1831 relating the end of this conflict. This sentence, most unfortunately, is not communicated in that article.

89 Cf. the series of royal orders issued between February 24, 1780, and November 23, 1780, on the lacking scriptural evidence, *Royal Orders III* (1985) 82–84.

90 The Sāsanavaṃsa gives his name as Ñāṇābhisāsanadhajamahādhamma-rājaguru, Sās 134 / Sās-trsl. 135.

91 *Royal Orders IV* (1986) 11.

92 *Royal Orders IV* (1986) 47–52: April 21–26, 1784.

93 This kind of punishment is mentioned much earlier as *udaka-dāruvālikādīnaṃ āharāpanaṃ*, Sp 1013.22.

94 W. B. Bollée, "Die Stellung der Vinaya-Ṭīkās in der Pāli-Literatur," *XVII. Deutscher Orientalistentag, July 21–27, 1968, in Würzburg*. ZDMG Supplementa I, 3. Wiesbaden 1969, p. 833, and CPD: Epilegomena 1.2.10.

95 The reference number is 01–04–028–00, roll no. 49.

96 The reference number is 01–04–027–00, roll no. 49.

97 Shway Yoe, *The Burman. His Life and Notions* (London: 1910) 149 (reprinted with a biographical sketch of the author by J. Falconer [Arran: 1989]).

98 *Royal Orders I* (1983) 24: June 23, 1607.

99 *Royal Orders II* (1985) 73.

100 *Royal Orders IV* (1986) 62.

101 H. Bechert, "Laws of the Buddhist Saṅgha: An Early Juridical System in Indian Tradition," lecture given at the symposion on Recht, Staat und Verwaltung im klassischen Indien, Munich, July, 1992; O. v. Hinüber, "The Arising of an Offence: *āpattisamuṭṭhāna*. A Note on the Structure and History of the Theravādavinaya," JPTS 16 (1992): 55–69.

102 G. Schopen's "Doing Business for the Lord: Lending on Interest and Loan in the Mūlasārvāstivāda-*vinaya*" has succeeded in finding influences of Dharmaśāstra on a Vinaya, which sheds new and quite unexpected light on the history of Buddhist law. Dharmaśāstra influence can be felt perhaps in Vibh-a 382.29–383.32, where it is said that there is a difference in offenses such as murder or theft depending on the person against whom it is directed.

103 Theravāda law seems to have been held in high esteem among Buddhists, as can be deduced from the fact that the *Samantapāsādikā* was translated into Chinese and taken over by the Dharmaguptaka school; cf. note 78 above.

104 Cf. W. Rau, "Indiens Beitrag zur Kultur der Menschheit," *Sitzungsberichte der Wissenschaftlichen Gesellschaft an der Johann Wolfgang Goethe-Universität Frankfurt am Main*. Band XIII, No. 2. (Wiesbaden: 1975).

105 Cf. D. Pingree, "History of Mathematical Astronomy in India," *Dictionary of Scientific Biography*, Vol. 15 (New York: 1978) 533–633.

106 *Dharmaśāstra and Juridical Literature* (Wiesbaden: 1973); *History of Indian Law (Dharmaśāstra)* (Leiden: 1973). Later J. D. M. Derret has devoted some studies to Buddhist, though not to Theravāda law, e.g.: *A Textbook for Novices. Jayarakṣita's*

«Perspicuous Commentary on the Compendium of Conduct by Śrighana», Pubblicazioni di Indologica Taurinensia XV (Torino: 1983).

107 Here a recent Ph. D. thesis from Göttingen deserves to be mentioned: P. Kieffer-Pülz, *Die Sīmā. Vorschriften zur Regelung der buddhistischen Gemeindegrenze in älteren buddhistischen Texten* (Berlin: 1992).

96

BUDDHIST LAW ACCORDING TO THE THERAVĀDA – *VINAYA* (II)

Some additions and corrections

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1.

In a forthcoming article, Édith NOLOT discusses the *Vinaya* term *nāsanā* in great detail[1]. In course of her discussion she briefly draws attention to the fact that *paṭiññāya*, Sp 582, 30 sqq. does not mean "with the consent", as I erroneously translated JIABS 18.1 1995, p. 37, 6, but "by acknowledgement".

As I did not concentrate on the legal side of the relevant paragraph in the *Samantapāsādikā* in my earlier article, but on the problem of legal texts belonging to the Abhayagirivihāra, it may not be out of place to make good for this omission. The *Samantapāsādikā* here comments on the VIII. *Saṃghādisesa* dealing with a monk accusing another monk of a *pārājika* offence without any reason. This rule is introduced by the story of the monk Dabba Mallaputta who is wrongly and maliciously accused by the nun Mettiyā to have raped her. Consequently, the nun Mettiyā is punished by expulsion from the order (*nāsanā*): *tena hi bhikkhave Mettiyaṃ bhikkhuniṃ nāsetha*, Vin III 162, 37 quoted Sp 582, 16.

From the text of the *Vinaya* it is clear that Mettiyā acts at the instigation of the Mettiyabhummajaka monks, who persuade her to accuse Dabba Mallaputta of rape. The reason is that they want to do harm to Dabba Mallaputta, who is highly respected by laypeople and therefore gets better food than they themselves. Thus there is not the slightest shadow of doubt that Dabba Mallaputta is an innocent victim of the combined viciousness of the Mettiyabhummakaja monks and the nun Mettiyā.

Here, the legal problem starts, at least as the *Samantapāsādikā* sees it. Once Dabba Mallaputta rightly rejects the accusation, the following sentence quoted by É.NOLOT from a different context and concerning two novices is valid: *tatra dūsakassa paṭiññākaraṇaṃ natthi*, Sp 269, 9 "there is no acknowledgement by the rapist." According to the *Sārattha- dīpanī* by Sāriputta this means[2]:

pucchitabbābhāvato. na hi dūsako "kena cittena vītikkamaṃ akāsi, jānitvā akāsi, udāhu ajānitvā" ti evaṃ pucchāya arahati, Sp-ṭ (B^e 1960) II 94, 1–3 "Because there is no questioning. For the rapist does not deserve to be asked thus: 'With which intention did you commit this transgression, intentionally or unintentionally?' " Obviously, a rapist is expelled from the Saṃgha at any rate[3], but not necessarily the person raped. For the *Samantapāsādikā* continues: *dūsito pucchitvā paṭiññāya nāsetabbo. sace na sādiyati na nāsetabbo*, Sp 269, 10[4] "[the monk, who] has been raped, is to be expelled because of [his] acknowledgement after having been asked. If he did not enjoy it, he is not to be expelled." The reason for this procedure is given by Kassapa Coḷa in his *Vimativinodanī: paṭiññākaraṇaṃ natthi sevetukāmatā maggena maggappaṭipattīti dvinnaṃ aṅgānaṃ siddhatā. dūsitassa pana maggena maggapaṭipatti evam ekaṃ siddhaṃ, sevetukāmatāsaṅkhātaṃ sādiyanaṃ asiddhaṃ. tasmā so pucchitvā "sādiyin" ti vuttapaṭiññāya nāsetabbo*, Vmv (B^e 1960) I 147, 23–26 "There is no acknowledgement because both parts, the desire to have intercourse and the entering by an (appropriate) way is certain. However, in case of the raped [monk] only the entering by an (appropriate) way is certain, the enjoyment called desire to have intercourse is not certain. Therefore, he is to be expelled because he says in acknowledgement after having been asked 'I enjoyed it[5]' ". This, at the same time, shows that the *Vimativinodanī* gives a slightly different explanation. For, if *sevetukāma* is considered as certain, *ajānitvā* of the *Sāratthadīpanī* is of course ruled out[6].

In the story of Dabba Mallaputta and Mettiyā this obviously leads into a dilemma: If Mettiyā acknowledges rape, she is to be expelled, but so is the innocent Dabba. This seems to be the underlying reason for the Mahāvihāra/ Abhayagirivihāra controversy dealt with briefly in my earlier article: *kiṃ pana bhagavatā Mettiyā bhikkhunī paṭiññāya nāsitā apaṭiññaya nāsitā ti. kiñ c'ettha yadi tāva paṭiññāya nāsitā thero kārako hoti sadoso, atha apaṭiññāya thero akārako hoti adoso*, Sp 582, 30–34 "Has the nun Mettiya been expelled by the Buddha because of [her] acknowledgement [or] without acknowledgement? For if she has been expelled because of an acknowledgement, the Elder [Dabba Mallaputta] has acted [i.e. has committed an offence] and is guilty. Without acknowledgement [by Mettiyā], he has not acted and is not guilty."

In our *Vinaya* text, which is the one of the Mahāvihāra, no immediate reason for Mettiyā's expulsion is given in the rather neutral formulation: *tena hi bhikkhave Mettiyaṃ bhikkhuniṃ nāsetha*, Vin III 162, 37 quoted Sp 583, 12, in contrast to the Abhayagiri version: *tena hi bhikkhave Mettiyaṃ bhikkhuniṃ* **sakāya paṭiññāya** *nāsetha*, Sp 583, 9. This, however, involves the guilt of the innocent Dabba Mallaputta. We do not know, if and how the Abhayagiri *Vinaya* experts may have solved this problem[7], which was evidently widely discussed.

However, the legal experts of the Mahāvihāra also run into difficulties. If it is not a clear case of rape as the one between Sāmaṇeras referred to in *Pārājika* I (Vin III 323, 29 sq. with Sp 269, 9–22), but involving two ordained members of the Saṃgha contradicting each other when asked about the evidence, the

situation becomes complicated. In the very beginning of this discussion it is simply stated: *Dabbassa ca yasmā imassā ca vacanam na ghaṭīyati, tasmā Mettiyaṃ bhikkhuniṃ nāsethā ti vuttaṃ hoti*, Sp 582, 17–19 "because Dabba's [evidence] and her evidence do not agree, therefore it is said "you should expell the nun Mettiyā"."

After the neutral text without *sakāya paṭiññāya* is said to be superior, a detailed discussion of the legal problems follows in the *Samantapāsādikā* (Sp 584, 15–585, 9): "These are the considerations of the experts in the [legal] commentaries (*aṭṭhakathācāriya*)[8]: If a monk wrongly accuses another monk of a *pārājika* offence (*antimavatthu*), this is a *saṃghādisesa* offence [*Saṃghādisesa* VIII, Vin III 163, 21**]; if he accuses a nun, it is wrong doing (*dukkaṭa*)[9]. On the other hand, it is said in the *Kurundī*: [here applies the rule:] if there is a lie, it is a *pācittiya* (*Pācittiya* I, Vin IV2, 14**)[10].

Here, the following has to be considered:

According to the first interpretation (*purimanaye*; i.e. of the experts in the commentaries), wrong doing is adequate because of an intentional accusation (*anuddhaṃsana*). Although (1.) in case of a lie there is a *saṃghādisesa* offence for a monk [and not *Pācittiya* I], if a second monk is involved, [and] although (2.) in case of a lie, it is not a conscious lie, if a monk talks with the intention to offend (*akkosa*) a [second] monk, who is unclean [i.e. who has committed an offence], but of whom he [the first monk] thinks to be clean [i.e. not to have committed any offence], but a *pācittiya* offence because of abusive speech (*Pācittiya* II, Vin IV 6, 5** with Vin III 166, 9), as [in these two cases], in the same way here, too, (i.e. Mettiyā vs. Dabba Mallaputta) a *pācittiya* offence involving a conscious lie does not apply, because of an intentional accusation. It is correct to assume only wrong doing[11].

According to the last (i.e. second) interpretation (*pacchimanaye*) because of a lie only a *pācittaya* offence is adequate. For, according to the rule (*vacana*) there is a *saṃghādisesa* offence for a monk, if he intentionally accuses a [second] monk (*Saṃghādisesa* VIII), and for [a monk,], who intends to offend [a second monk] a *pācittiya* offence (*Pācittya* II according to Vin III 166, 9).

There is no such rule [saying] it is wrong doing, if a monk [offends] a nun [and not another monk][12]. However, there is the rule [saying that there is] a *pācittiya* offence in case of a conscious lie (*Pācittiya* I). Therefore, a *pācittiya* offence is adequate.

However, here the following careful considerations [are necessary]: If there is no intentional accusation (*anuddhaṃsana*), it is a *pācittiya* (i.e. *Pācittaya* II, and not *Saṃghādisesa* VIII) offence; if this (i.e. the intention) is there what is to be assumed then? Here, although it is correct that there is a *pācittiya* offence, if somebody lies, there is an independent *pācittiya* offence, if somebody accuses [a monk] of an unfounded *saṃghādisesa* offence (Vin IV 9, 9), therefore, because the intention to accuse is there, there is no room for a *pācittiya* offence because of a conscious lie (*Pācittiya* I). But it is impossible that there is no offence [at all] for [the monk] who accuses[13].

The first interpretation seems to be better: Therefore, if a nun accuses a [second] nun of an unfounded *pārājika* offence, it is a *saṃghādisesa* offence [*Saṃghādisesa* II, which is common to both, monks and nuns (*sādhāraṇa*), Sp 915, 35; Kkh 43, 34], if she accuses a monk, it is wrong doing[14]. Here, a *saṃghādisesa* is [an offence] leading to removal, wrong doing is leading to confession[15]; neither leads to expulsion (*nāsanā*).

Because she (Mettiyā) has a bad character by nature, is a wicked nun and says moreover herself "I have a bad character", therefore the Buddha expells her because of this state of uncleanness."

So far the *Samantapāsādikā*. Thus, in the end Mettiyā is simply expelled, because she is "by nature a wicked nun of bad character" (*pākatiyā'va dussīlā pāpabhikkhunī*). This indicates that, at least at the time of the *Samantapāsādikā*, there was no tangible legal argument in the *Vinaya* by which Mettiyā could have been expelled(!). This might indicate that the verb *nāseti* is used rather loosely in the introductory story to *Saṃghādisesa* VIII, because there is no rule according to which the offence committed by Mettiyā could be handled. The *saṃghādisesa* thus introduced is used against the Mettabhummajaka monks who had persuaded Mettiyā to make a false accusation.

2.

The second correction concerns a mistranslated sentence on p. 25, 31 sq. of my article mentioned above in the story of the theft occurring in *Antarasamudda* (Sp 306, 29–307, 22): When it is said that the value of the stolen object is a penny or even less, the Elder Godha, who eventually decides the case, asks (and not states, as translated previously): "Indeed, has the Buddha prescribed somewhere a *pārājika* with regard to a penny (*māsaka*) or even less than a penny?" The answer to this question is of course "no": *āpatti thullaccayassa … atireka-māsako vā ūnapañcamāsako vā*, Vin III 54, 22, cf. III 47, 3 "it is a grave offence (but no *pārājika*), [if the stolen goods are worth] more than a *māsaka* or less than five *māsaka*." Thus Godha reverts the earlier verdict that there had been a theft, and rightly so.

Notes

1 "Studies in Vinaya technical terms VI", note 28, JPTS 24.1998 (in press).
2 The *Vajirabuddhiṭīkā* does not explain this paragraph.
3 Cf. *dve … nāsetabbā*, Sp 269, 9.
4 E[e] *dūsito ti pucchitvā*: has to be corrected into *dūsito pucchitvā* with B[e].
5 My understanding of this paragraph owes much to criticism and suggestions by the Venerable Bhikkhunī Juo-hsüeh.
6 Vmv occasionally criticises Sp-ṭ: O. v.HINÜBER: *A Handbook of Pāli Literature*. Berlin 1996, § 338.
7 In spite of Vjb B[e] (1960) 196, 14–20 and Vmv B[e] (1960) 1282, 12–20.
8 According to both, Sp-ṭ B[e] (1960) II 346, 16 and Vmv B[e] (1960) I 282, 24, this opinion is found in the *Mahāaṭṭhakathā*.

9 These experts are quoted here, because the latter case *bhikkhuniṃ anuddhaṃseti dukkaṭaṃ*, Sp 583, 17 is not provided for in the Vinaya as confirmed by *pāḷiyaṃ anāgatattā*, Sp-ṭ Be (1960) II 347, 3. If something is neither found in the Vinaya (*sutta*), nor in the Mahāpadesas of the Vinaya (*suttānuloma*), it is possible to resort to the *ācariyavāda*, which is the Aṭṭhakathā tradition as established by the participants of the first council (Sp 230, 27; 231, 9–11).

10 Consequently, the views quoted are contradictory and need discussion.

11 According to the opinion of the *Mahāaṭṭhakathā* communicated Sp 583, 17, cf. note 9 above, there is wrong doing, if a monk acts versus a nun. This is reverted on purely formal grounds in *bhikkhunī . . . bhikkhuṃ anuddhaṃseti dukkaṭaṃ*, Sp 584, 5.

12 As this is what is found in the *Mahāaṭhakathā* [cf. Sp 583, 17], it is likely that Sp 583, 19–25 is a quotation from or rather a paraphrase of the text as found in the *Kurundī*. Note also the unusual expression *vacanappamāṇa*.

13 This seems to be the consequence because the *Kurundī* assumes the wrong offence, i.e. Pācittiya I instead of Pācittiya II. Consequently, there is some sort of formal defect in the reasoning of the *Kurundī*.

14 This follows from the assumption by the experts quoted Sp 583, 17.

15 The category *desanāgāmin* applies to the five *lahuka* offences (Sp 1382, 14 with Sp 1319, 12 sq.) that is to all offences except Pārājika and Saṃghādisesa according to Sp 1334, 30 (ad Vin V 127, 22). Only Saṃghādisesa offences are classified as *vuṭṭhānagamin*, cf. also Sp-ṭ Be (1960) I 168, 16 sq. ad Sp 415, 23, because they are "removed" by *parivāsa* etc.